

STATE AND LOCAL IMPLEMENTATION OF EXISTING CHARITABLE CHOICE PROGRAMS

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STATE AND LOCAL IMPLEMENTATION OF EXISTING CHARITABLE CHOICE PROGRAMS

TUESDAY, APRIL 24, 2001

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:08 p.m., in Room 2141, Rayburn House Office Building, Hon. Steve Chabot [Chairman of the Subcommittee] presiding.

Mr. CHABOT. The Committee will come to order. This is the Subcommittee on the Constitution. I am Steve Chabot, the Chairman. The subject matter of the hearing this afternoon is State and local implementation of existing charitable choice programs. While the first amendment to the Constitution provides that the government shall not establish a particular religion or religion over nonreligion, the first amendment also provides that the government shall not prohibit the free exercise of religion. Consequently, government must ensure that members of organizations seeking to take part in government programs designed to meet basic or universal human needs are not discriminated against because of their religious views.

This simple principle of charitable choice allows for the public funding of faith-based organizations with demonstrated abilities to meet the needs of their neighbors in trouble while preserving the religious character of those organizations by allowing them to choose their staff, board members and methods. These principles also protect the rights of conscience of program beneficiaries by ensuring that alternative providers, providers that are unobjectionable to them on religious grounds, are always available.

Charitable choice simply means equal access. Charitable choice is not a new idea. Existing charitable choice programs have benefitted thousands of persons in need without raising constitutional concerns in their implementation. Every Member of this Subcommittee, except for one newly-elected Member, has previously voted for Federal legislation containing charitable choice principles.

Of all my Democratic colleagues on the Subcommittee, most have voted for at least two such pieces of legislation, the Community Service Block Grants Act and the Substance Abuse and Mental Health Services Act. The latter was supported by every Member of the Judiciary Committee and signed into law by President Clinton. That law's purpose as stated in the legislation itself is to "prohibit discrimination against nongovernmental organizations and certain individuals on the basis of religion in the distribution of govern-

ment funds to provide substance abuse services and to allow the organizations to accept the funds without impairing the religious character of the organizations or the religious freedom of the individuals.”

My own State of Ohio has benefitted greatly from charitable choice programs. Along with the States of Texas, Wisconsin and Indiana, Ohio received an “A” grade for its implementation of charitable choice programs from the Center for Public Justice, a research organization that tracks charitable choice initiatives.

It is a tragedy that those moved to help others by the strength of faith, perhaps the most powerful spur to human improvement and the inspiration for untold numbers of selfless acts, face added barriers to Federal social service funds based on misguided understandings of the Constitution’s religion clause.

Often, it is those whose earthly compassion has the deep roots of faith who stand strongest against the winds of despair. Different rules should not apply to them when they seek to cooperate with the Federal Government in providing help to the helpless. Some perspective is also in order. For most of American history social services programs have been run by largely faith-based organizations at the local level with low administrative costs and a unique understanding of the particular needs of their neighbors in trouble.

But now the government funds, controls and administers many of those programs, leading to higher taxes, greater inefficiency and unfortunately, oftentimes, less success. Today, a family with two earners pays over 40 percent of their income for taxes, more than they spend on their own food, clothing and housing combined. When the government takes so much, little is left for those families to give to their local charities, including faith-based organizations. At the same time, the government too often excludes out-of-hand faith-based organizations from the receipt of government funds, even when such organizations can help meet basic human needs most effectively and in accordance with both the free exercise of religion and the establishment clause. This is the problem charitable choice programs seek to address.

Now, some critics of charitable choice programs say they worry that Federal funds will be used to preach to people. Implicit in that criticism is the idea that religious persons can’t be trusted to follow the rules against the use of Federal funds for proselytizing activities. Other critics of charitable choice say they worry that churches will become corrupted by money if they receive Federal funds. Implicit in that criticism is the idea that religious persons are more prone to corruption than anyone else who receives government funds. I reject those assumptions. And I hope we can all begin a discussion of charitable choice by according those moved by faith the same respect we accord to others.

A first step toward understanding the constitutional issue related to proposals to expand the number of Federal programs governed by charitable choice principles is to understand how those principles have been followed thus far. The witnesses before us today have important and insightful stories to tell, and I look forward to exploring with them how existing charitable choice programs have been implemented.

I now yield to the Ranking Member of the Committee, the gentleman from New York, Mr. Nadler, for a 5-minute opening statement.

Mr. NADLER. Thank you, Mr. Chairman. Today we begin our hearings on charitable choice. Our witnesses today will discuss how previous legislation has been implemented. I hope that given the fact that there is very little track record so far, as at least one majority witness will testify, we do have—we will have the chance to look at some of the current proposals and bring in scholars to discuss the very serious constitutional issues they pose. That is to say, I hope we will have hearings on the pending legislation.

I would like to clarify the record before we begin. The majority memo and the Chairman, in his statement, stated that every Member of the Subcommittee has voted for charitable choice at one time or another. I have taken the liberty of reviewing the votes listed in the memo and discovered that, speaking for myself, my votes for drug treatment, home heating assistance and other vital programs, have been counted as support for this radical new approach for charitable choice. Nothing could be further from the truth.

If my votes, and I might add others, have created a misimpression, let me clear that up now. I have never supported charitable choice. We have never had an opportunity to vote on a charitable choice bill. Charitable choice provisions have been included in omnibus budget bills, omnibus appropriation bills, and in bills providing for home heating assistance and other vital programs. To vote against home heating—to vote for home heating assistance, rather, or to vote for the omnibus, I think it was \$700 billion appropriations bill, cannot be counted as a vote for every provision in that bill, in particular, for the charitable choice provisions of that bill.

I would also have to invite anyone curious about this matter to note that some stalwart supporters of charitable choice voted against these bills. I assume it was not because of their views on charitable choice, but for other reasons having to do with the major provisions of the bills.

I have grave concerns about the constitutionality of charitable choice. The Chairman stated that throughout our history, churches and other religious institutions have provided social services and have done a good job, and that is certainly the case, and that is still the case today. And the principles of separation of church and State have not hindered them from doing that. And the principles of separation of church and State have not hindered churches and synagogues and mosques from participating in the administration of social service programs using Federal and government funds.

They have, however, been required to refrain in doing so from discrimination on racial, religious or other grounds in employment and in who gets the services. They have been required to adhere to our civil rights laws. And they have been required not to engage in proselytization, subject to those—or to condition receipt of social services on listening to a religious lecture or participating in a religious ritual.

Subject to those limitations, however, they have had equal right as anyone else to participate, and they have. Many availed themselves of the right to use Federal funds for their charitable and so-

cial service purposes. The only purpose of charitable choice, when all is stripped away, is to remove these limitations.

Despite the claims of some but not all proponents of charitable choice to the contrary, to allow religious indoctrination to be a precondition of receipt of certain social services with Federal money, and to allow churches and others to discriminate in employment and in provision of services based on religion on other factors, to do an end run around the civil rights laws.

And that is why I oppose these bills. They are not necessary. That is why I oppose the whole concept of charitable choice. It is not necessary in order for religious institutions to participate in social programs and use of Federal funds for that. They do so today. Charitable choice is necessary only to enable an end run around the civil rights laws or the first amendment provision of establishment of religion.

The separation of government and religion has never stopped people of faith from doing good and has never stopped government cooperation with religious community in solving some of our most pressing social ills. It has, however, protected individual liberty. I see no need to tamper with that now. Religion will be better off, government accountability will be better off, and individuals will not face religious coercion precisely when they are at their most helpless.

Religion has never needed government and it does not need it now. What we could use are fewer trillion tax breaks for the very wealthy and a few more dollars to feed the hungry, house the homeless, treat the sick and educate our children. I realize that is not on the agenda for this Congress or this President, so perhaps the poor had better do a little more praying because they cannot expect help from Washington any time soon.

Thank you, Mr. Chairman I yield back.

Mr. CHABOT. Thank you. The gentleman's time has expired. Any other Members of the Committee who would like to make opening statements, they are welcome to do so. Or they can submit them in writing.

Mr. Scott.

Mr. SCOTT. Mr. Chairman, I know it is the practice to go on to the witnesses. I would want to make one clarification, however. In your chart that suggests that some of us have supported charitable choice at one time or another, I ask unanimous consent that I be able to introduce into the record the actual background of PL 106-310 that went through various versions. When I voted for it, it did not have charitable choice in it. When it came back in conference with charitable choice, I voted no.

So I would like the record to be accurate because of charitable choice. And I associated myself with the remarks of the gentleman from New York by suggesting that a vote for an omnibus bill is a vote for charitable choice is ridiculous. Yield to the gentleman from—.

Mr. FRANK. I don't want to make a full statement. I would say in the interests of comity that I think my colleague from Ohio is a better Chairman than historian.

Mr. CHABOT. Than what?

Mr. FRANK. Than historian.

Mr. CHABOT. Thank you, Mr. Frank. I appreciate that. Any Members on the Republican side that would like to make an opening statement? If not, we will go to the introduction of the witnesses. I would like to apologize for the heat in this room. I know some of you probably figure the Federal Government has run out of money. That is not true. We still got a little bit left. We are trying to get the air conditioning working in here, but unfortunately, it is very hot, we apologize for that. We will now introduce the witnesses and then go to their testimony.

Our first witness this morning is Dr. Amy Sherman. Dr. Sherman is a senior fellow in the Welfare Policy Center of the Hudson Institute. Dr. Sherman is the author of *The Growing Impact of Charitable Choice*, the first major national study of the charitable choice provisions of the 1996 welfare reform law. She is also the author of *Restorers of Hope: Reaching the Poor in Your Community With Church Based Ministries That Work*, and a booklet entitled *Establishing a Church Based Welfare-to-Work Mentoring Ministry, a Practical How To Guide*. Along with her research working at the Hudson institute Dr. Sherman serves as the urban ministry advisor at Trinity Presbyterian Church in Charlottesville, Virginia.

Our next witness will be Reverend Donna Lawrence Jones of the Cookman United Methodist Church in north Philadelphia, an urban church where more than 95 percent of its members live within walking distance. Reverend Jones gives hope to those within her intimate community by helping to run a welfare-to-work program for women called *Transitional Journey Ministry*.

Our third witness is from my home town of Cincinnati where he has done tremendous work serving and inspiring those in need. He is Charles Clingman, executive director of Jireh Development Corporation, an initiative of Christ Emanuel Christian fellowship and Bishop Michael E. Dantley that builds houses for people with low to median incomes. Mr. Clingman has also helped serve thousands as part of the Exodus Program, which teaches people how to hold down a job, manage a budget and become self-sufficient.

The Exodus Program is comprised of 21 employees representing seven different churches in the Cincinnati area. I have known Mr. Clingman for many years going back to my days in the Cincinnati city council. I am pleased that the Committee will have an opportunity to learn more about some of the cutting edge programs he is working on to assist people in our community.

Our fourth and final witness is Reverend J. Brent Walker, executive director of the Baptist Joint Committee on Public Affairs. Reverend Walker is also an adjunct professor of law at the Georgetown University Law Center.

Mr. CHABOT. Thank you for being here this afternoon. And I would ask that each of you please try to summarize your testimony in 5 minutes or less. And without objection, your witness statement will be made part of the permanent hearing record.

We will keep the record open for 10 days in case any of the panel members would like to supplement their testimony, or in case any of the Members of the Subcommittee would like to enter a statement into the record.

And you will note that there are two sets of lights up there, and essentially the red light means—the yellow light will tell you you

have 1 minute to wrap up, and then when the red light comes on, we appreciate that you would wrap up as quickly as possible because that means the 5 minutes is up. We again want to thank all the witnesses for coming and we will start with Dr. Sherman.

**STATEMENT OF AMY SHERMAN, SENIOR FELLOW, WELFARE
POLICY CENTER, HUDSON INSTITUTE**

Ms. SHERMAN. Thank you for the opportunity to comment on the implementation of existing charitable choice programs. My remarks are based on analysis from a nine-State study of charitable choice implementation as well as additional research I have conducted in the past few years.

Charitable choice aims to create a level playing field between secular and religious social service providers competing for public funding. And it was designed in part to facilitate increased collaboration between government and faith-based organizations without compromising the religious character of the service providers or abridging the civil liberties of clients. Based on my study of charitable choice implementation in the nine States, I concluded that charitable choice is, in fact, accomplishing those aims.

First, it has made church-state collaboration plausible to public officials and religious leaders. It has served as a sort of green light to public officials who now feel more comfortable reaching out to the faith community because Washington has given its blessing to such cooperation.

Second, interviews with faith and government representatives working collaboratively indicated that religious groups accepting public funding are not having to sell their souls, and their clients civil rights are being respected. The study uncovered almost no examples of faith-based organizations that felt their religious expression had been squelched in their collaborative relationship with government. And out of the thousands of service recipients engaged in programs offered by faith-based groups collaborating with government, interviewees reported only two complaints by clients who felt uncomfortable with the religious organization from which they received help.

And in both cases in accordance with the charitable choice guidelines the client simply opted out of the faith based program and enrolled in a similar program operated by a secular provider.

Third, charitable choice is indeed stimulating new partnerships. Over half of the faith-based organizations receiving government funding in these nine States had had no previous history of collaborating with government. And thus we see the traditional social service network as being broadened with the inclusion of new players. Moreover, and importantly, these new players are doing new things, that is, in their collaboration with government, some churches and faith-based organizations are offering to low income citizens services that they had not previously offered. The bottom line in terms of the news from the front lines about implementation is simply this: so far, so good.

Let me comment now on a few specific topics of interest to the hearing. In terms of the actual scope of contracting with regard to the nine-State study, I uncovered 84 examples of financial collaboration, crafted since 1996, and the total dollar amount of those con-

tracts was about \$7.5 million. Wisconsin, California, Texas and Michigan were the most active States.

In addition to those activities in the nine States, I have uncovered examples of charitable choice collaboration in seven additional States: Arkansas, Indiana, Maryland, North Carolina, Ohio, Washington, and West Virginia, and the total amount of contracting with faith-based groups for those States equaled approximately \$60.7 million.

Most of these contracts are underwritten with funds from the TANF block grant or from the Department of Labor's welfare-to-work program.

In terms of the types of services offered by far in the nine-State study, mentoring and job training efforts were the most popular programs being funded through these new contracts. Third, we could ask "Well, what difference really is charitable choice making? Are faith-based groups doing services that they might have done otherwise anyway with private funding?"

In terms of this, what we can note from the nine-State study is that there were 71 contracts that government had written with faith-based groups that have not had a previous history of accepting government funding. And out of those 71 contracts, 13 were to underwrite a new service that the faith-based organization had not previously offered. Three were with faith-based groups who, as a result of their contracting, were able to offer an expansion of old service.

And finally, in terms of lessons learned on the ground, I think we can cite two very obvious ones. One is that there exists a tremendous need to educate public officials about charitable choice. And that officials need to be held accountable to actually comply with charitable choice.

The other lessons are a little less obvious. One is simply to recognize that direct financial collaboration between government and faith groups is just one means of cooperation. The study uncovered many examples of fruitful nonfinancial collaboration. Another is to note that perhaps the best mechanism of collaboration reported by the interviewees was that of indirect financial contracting, wherein the government would write a contract with a strategic intermediary organization which then turned around and wrote sub-contracts with smaller individual faith-based organizations and congregations.

Another lesson from the study was that we uncovered no examples of a client being unable to exercise his or her right of receiving services from an alternative secular provider. Now, hypothetically, in the future this could be a problem, but it has not to date presented itself as a problem.

And then finally, it seems that charitable choice contracting is not for everyone. Some faith-based organizations lack the administrative capacity. Others don't wish to pursue government funding out of certain theological convictions. But the data does suggest so far that for many other faith-based organizations, collaborating with government may indeed be a fruitful strategy that strengthens their ability to lovingly assist vulnerable citizens to achieve their highest potential.

Mr. CHABOT. Thank you very much, Dr. Sherman.

[The prepared statement of Amy Sherman follows:]

PREPARED STATEMENT OF AMY L. SHERMAN

GENERAL COMMENTS

Thank you for this opportunity to comment on the implementation of existing Charitable Choice programs. My remarks are based on observations and analysis from the research I have been conducting on this subject for the past four years. First, I will make some general comments based on my study of charitable choice implementation in nine states (CA, IL, MA, MI, MS, NY, TX, VA, and WI) and then offer some specific comments on several topics of interest to this subcommittee.

Charitable Choice aims to create a level playing field between secular and religious service providers competing for public funding and was designed in part to facilitate increased government-faith collaboration without compromising the religious character of the service providers or abridging the civil liberties of clients. Based on my study of charitable choice implementation in the nine states, I concluded that charitable choice is accomplishing those aims:

First, it has made church-state collaboration plausible to public officials and religious leaders. Charitable choice has served as a “green light” to public officials who now feel more comfortable reaching out to the faith sector because “Washington has given its blessing” to such collaboration. Meanwhile, religious leaders who mistakenly believed that the principle of separation of church and state made financial collaboration improper have discovered within charitable choice a formal approval of such collaboration.

Second, interviews with faith and government representatives working collaboratively indicated that religious groups accepting government funding are not having to sell their souls, and clients’ civil rights are being respected. The study uncovered almost no examples of faith-based organizations (FBOs) that felt their religious expression had been “squashed” in their collaborative relationship with government. Also, out of the thousands of service recipients engaged in programs offered by FBOs collaborating with government, interviewees reported only two complaints by clients who felt uncomfortable with the religious organization from which they received help. In both cases—in accordance with the charitable choice guidelines—the clients simply opted out of the faith-based program and enrolled in a similar program operated by a secular provider.

Third, Charitable Choice is stimulating new partnerships. Over half of the FBOs currently receiving government funding to underwrite new initiatives to serve the poor in the nine states I examined had no previous history of government contracting. Thus, the traditional social services network is being broadened with the inclusion of “new players.” Moreover, and importantly, these new players are doing new things. That is, in their collaboration with government, churches and FBOs are offering low-income citizens services they had not previously offered. In most instances, these religious groups have shifted from merely providing commodities to the poor (e.g., used clothing or free groceries) to working with struggling individuals intensively, face-to-face, through mentoring and job training programs.

The bottom line, in terms of the news from the frontlines of the implementation of charitable choice is simply this: so far, so good.

SPECIFIC COMMENTS

Allow me now to comment on several specific topics of interest to this hearing. *First, what is the scope of state and local efforts to implement charitable choice in terms of writing contracts with faith-based organizations?*

With regard to my study of the nine states, I uncovered 84 examples of financial collaborations crafted since 1996.¹ The total dollar amount of these contracts equaled approximately \$7,518,667 and through these initiatives approximately 3,000 lower-income citizens were being served.² (See Table A.) Notably, 57 percent of these collaborations were between government agencies and FBOs that had had no previous history of receiving government funds; thus my earlier comment that charitable choice has indeed brought “new players” into the arena of government-supported social services. WI, CA, TX, and MI were the most active states in fostering

¹That is, financial contracts underwritten by TANF or Welfare to Work funds (as these are regulated by Charitable Choice). The study did not examine FBO contracts written with HUD or other government funds not covered by Charitable Choice.

²See Table A for more details.

new collaborations with FBOs, and the most common types of social services the FBOs were offering were mentoring and job training.

In addition to activities in these nine states, I have uncovered examples of charitable choice collaborations in seven other states: AR, IN, MD, NC, OH, WA, and WV. The total amount of contracting with FBOs I uncovered for these states equaled \$60,669,000. I have not done an exhaustive survey and thus cannot say with certainty whether charitable choice contracting is also occurring in additional states. According to a recent survey of states conducted by the Associated Press, 31 states and the District of Columbia have awarded no government contracts “to religious groups who would have not been eligible” prior to charitable choice.³ Based on the knowledge available, it is reasonable to conclude that roughly two-thirds of states have not pursued new financial contracting opportunities with FBOs under charitable choice. Such a conclusion also fits with what we know about charitable choice compliance by the states. According to the Center for Public Justice’s National Charitable Choice Report Card, 37 states and the District of Columbia received a failing grade of “F.” This grade indicates that these states have not made the necessary changes in their procurement procedures and contracting language that would bring them into compliance with the charitable choice guidelines.⁴

Table B provides some data drawn from a variety of news reports concerning additional contracting activities occurring in the nine states and other states. For all the states except MD, NC, and WV, these figures concern the total amount of contracting with FBOs; i.e., they count not only those contracts written with organizations new to formal public collaboration but also those with a history of receiving government funds. As Table B indicates, the total of these contracts comes to \$60,669,000.

Thus, I estimate that the total amount of contracts in these 15 states, written both with FBOs new to financial collaboration with government and FBOs with previous government contracts, equals approximately \$68,187,667.000.⁵

However, the figures we are most interested in when we pose the question, “How much charitable choice contracting is actually happening?” are those that tell us about the scope of contracting with *FBOs that are new to the arena of formal government collaboration. After all, Charitable Choice proposes to create a level playing field for faith-based providers of social services in the competition for public funding; it is about providing equal access to organizations that desire to preserve their religious identity and character when receiving public dollars. Therefore, in Table C, I have provided an estimate of the total of contracting between government agencies and these “new players” in the nine states of my original study. The grand total of such contracts for these nine states equaled \$5,029,755. This means that, of funds undergirding all the financial contracts these nine states wrote with FBOs, approximately 67 percent of the dollars went to FBOs that were not part of the traditional—some would say “old boys” network’ of—religiously affiliated social service providers.*

Finally with regard to the scope of contracting, it should be noted that the vast majority of contracts uncovered in the study were those funded under the TANF (Temporary Assistance to Needy Families) program. The rest were funded under the Department of Labor’s Welfare to Work program. I found no instances of contracts with FBOs written under the CSBG (Community Services Block Grant) or SAMHSA (Substance Abuse and Mental Health Services Administration) programs (these are the other two federal funding streams currently regulated by charitable choice).

The second topic of interest concerns the nature of services being provided to the poor through these government-faith collaborations. By far in the nine states studied, mentoring and job training efforts were the most popular programs being funded through contracts with “new” FBOs. From the information available regarding contracting in other states besides those nine, again mentoring and job training services topped the list. That is not to say, however, that these are the only services being offered. Under charitable choice, FBOs are also providing transportation services, life skills training, shelter and counseling for the homeless, and substance abuse recovery programs.

³“State participation in charitable choice,” The Associated Press, Washington Dateline (March 20, 2001). It should be noted, however, that in four of the 31 states, at least one government contract with a faith-based organization under federal funding streams regulated by Charitable Choice have been identified.

⁴“Charitable Choice Compliance: A National Report Card,” (Annapolis, MD: The Center for Public Justice, 2000).

⁵These figures, of course, do not tell us much about the *relative* amount of faith-based contracting occurring in these states. I.e., there are gaps in our knowledge about the proportion of contracts written with FBOs relative to the total amount of state contracting activity. See appendix A for a brief survey of contracting in WI that attempts to shed light on the relative amount of faith-based contracting there.

Third, we can ask the question: What difference is charitable choice making? In other words, to what extent are states and communities contracting with FBOs that could have received private funds and provided the services without charitable choice?

This is not an easy question to answer in the absence of significant discussions with the leaders of FBOs that are involved in these contracts. What we can say, from the nine-state study, is that there were 71 contracts government agencies had written with FBOs that did not have a previous experience of accepting government funding. Out of those 71 contracts, 13 were to underwrite a new service that the FBO had not previously offered and 3 were with nontraditional FBOs who, as a result of their charitable choice contracts, significantly expanded an “old” service.

Regarding activities outside the nine states of the original study, it appears that charitable choice has stimulated new services by nontraditional FBOs in West Virginia (Mission West Virginia) and in North Carolina (Faith Empowerment Coalition) and that it has stimulated a significant expansion of current services by other nontraditional FBOs (e.g., Jobs Partnership in NC and Payne Memorial Outreach in MD).

Fourth, we can ask to what extent are states putting into place the necessary infrastructure for recruiting and managing faith-based involvement.

Table D lists some information relevant to this query. As it indicates, 14 states have formally designated staff persons to serve as liaisons to the faith community (AZ, AR, CA, CO, GA, MD, NJ, NY, NC, OH, OK, PA, TX, VA). Indiana has established Faithworks, an agency within the state’s Family and Social Services Administration specifically designed to provide to FBOs technical assistance about contracting with government. Texas actually designates a staff person as a faith-based liaison in each of the DHS’s ten regions; Texas has also put in place an accounting/reporting system to keep track of the number of contracts being written with FBOs by the Department of Human Services and by the Texas Workforce Commission. Virginia and North Carolina, in addition to their state-level liaison to the faith community, have designated regional or county-level faith-based liaisons.

In addition, some states have formally reached out to the faith community by sponsoring state-wide or regional conferences on the faith community role’s in welfare reform. VA, CO, TX, NJ, IN, OH and PA are among those that have done this; OK and UT are currently planning such events.

In states that have pursued significant privatization of welfare service delivery, to discover how charitable choice is being implemented it is necessary to examine the relationship between FBOs and those nongovernment entities that hold contracts with state government to administer welfare and/or operate “One Stop” career centers. As regards this group, a few findings are notable. Wisconsin has formally encouraged private welfare contractors known as “Local Service Providers” (LSPs) to subcontract with FBOs by making such subcontracting a “best practice” that state officials look for when reviewing the proposals of competing LSPs.⁶ Also, Florida’s state Workforce Development Board is currently underwriting a dialogue between FBOs, business leaders, and individuals from the One Stop Centers that has as its aim the production of a series of recommendations for the state as to how it can facilitate fruitful collaboration between the state’s One Stop Centers and the faith community.

Fifth and finally, we can ask what lessons have been learned thus far concerning the implementation of charitable choice.

The first two, most obvious lessons are that (1) there exists a great need to educate public officials about charitable choice and (2) public officials need to be held accountable to comply with charitable choice in their state policies and procedures. Charitable choice is the law and is not optional.

The other lessons may be less obvious. One is to recognize that direct financial collaboration between government entities and FBOs is just one means of cooperation. My nine-state study uncovered over 40 examples of creative, non-financial collaborations through which individuals in need were receiving important supportive services from FBOs. In addition, the fact that charitable choice provides equal access to FBOs in the competition for public funding does not mean that efforts to create other means of increasing resources to effective FBOs should not be simultaneously advanced. In other words, the existence of charitable choice does not diminish the importance of efforts to increase the use of vouchers in the social service arena or to encourage federal and state charity tax credits.

Moreover, in a significant number of cases (20), the financial relationship between the government and the FBO was an indirect one, mediated via a strategic intermediary organization. In these examples, government wrote a generally large con-

⁶See Appendix A for details on FBO subcontracting in Wisconsin.

tract with the intermediary organization (usually a large, administratively sophisticated nonprofit such as Goodwill) and then the intermediary organization wrote subcontracts for specific services with smaller-sized FBOs. This arrangement was universally reported as a win-win situation. Government was enabled to write one large contract with an organization that it was confident had the technical expertise and experience to appropriately manage and administer the dollars, and small and mid-sized FBOs that would never have been able successfully to secure or administer a huge contract were able to partner with the intermediary and receive a modest and manageable amount of funding that supported their important and needed work. The FBO leaders from these arrangements that I interviewed also often volunteered that they were glad for the additional “distance” from government the indirect contracting mechanism afforded; they felt possible church/state tensions were diminished in this “arms-length” relationship.

A second less obvious lesson learned is that, despite significant media accounts to the contrary, conservative and Evangelical faith-based organizations are notably involved in charitable choice contracting. Fully 20 of the 84 financial collaborations engaged organizations labeling themselves conservative or Evangelical.

Third, the nine-state study uncovered no examples of a client being unable to exercise his or her right of receiving services from an alternative, secular provider. The charitable choice guidelines insist that states must provide a secular alternative for clients who do not desire to receive their services from a faith-based provider. Even in my interviews with public officials from rural areas, I did not hear of any examples of clients being unable to exercise this right because of the lack of a geographically accessible secular provider.

Fourth, it is clear that both public officials and faith-based leaders need to be more careful to incorporate the charitable choice guidelines into the language of their contracts. In many instances, the contracts written with the FBOs utilizing federal funds regulated by charitable choice were the standard, “boiler-plate” contracts used prior to the 1996 reforms. Such contracts do not include the formal language of the charitable choice provisions. As noted earlier, this failure to codify charitable choice in these contracts has not led to serious problems with respect to the rights of FBOs or service beneficiaries. Nonetheless, as government-faith collaborations continue to increase, it will be important for both parties to be more intentional in formalizing their working relationship according to the guidelines specified by charitable choice. Doing so will further minimize the likelihood of problems for either FBOs or clients.

Fifth, and finally, it is clear that charitable choice contracting is not a good option for all FBOs. Some lack the necessary administrative capacity for managing government contracts of any significant size. Others, based on their theological doctrines, cannot in good conscience accept government funding. Still others may so premise their community healing efforts on direct evangelism and proselytization that they would find it difficult to navigate the guidelines of charitable choice, which protect the religious character of FBOs receiving public funding but prohibit the expenditure of public dollars for purposes of sectarian worship or proselytization. However, for many other FBOs, collaborating with government may be a fruitful strategy that advances their mission and strengthens their community development projects and/or their initiatives to lovingly assist vulnerable citizens in achieving their highest potential.

In summary, it is important to note the tremendous current contribution FBOs and houses of worship currently make in strengthening America’s social safety net. Recent studies by Professor Ram Cnaan of the University of Pennsylvania⁷ and Professors Carl Dudley and David Roozen of Hartford Seminary,⁸ for example, suggest that over 85 percent of congregations provide critical social services, from preschools to prison ministries, health clinics and tutoring programs, to food pantries and literacy classes. Moreover, there is significant anecdotal evidence as to the effectiveness of FBOs in solving our most difficult social problems⁹ and growing empirical evidence of the importance of religion in the lives of at-risk youth in assisting them to escape the deleterious effects of living in disordered and distressed neighbor-

⁷Ram A. Cnaan and Gaynor I. Yancey, “Our Hidden Safety Net,” in E.J. Dionne and John J. DiIulio, Jr., eds., *What’s God Got to Do with the American Experiment?* (Washington, D.C.: The Brookings Institution, 2000) chapter 21.

⁸Carl S. Dudley and David Roozen, “Faith Communities Today,” (Hartford Institute for Religion Research at Hartford Seminary, March 2001).

⁹See, for example, Amy L. Sherman, *Restorers of Hope* (Crossway Books, 1997); Ronald J. Sider, *Just Generosity* (Baker Books, 1999), and Robert L. Woodson, Sr., *The Triumphs of Joseph* (The Free Press, 1998).

hoods.¹⁰ In the era of welfare reform devolution, it is clear the strength of the faith sector must be tapped in the great struggle against poverty. Charitable choice is one public effort of so doing—certainly not the only effort needed—but one that has thus far well-served the interests of those whom many in our society consider “the least of these.”

TABLE A
Contracting Under Charitable Choice
Results from 9-State Study (research completed 8/99)

<u>State</u>	<u>Direct Contracts</u>	<u>Indirect Contracts</u>
CA	\$1,116,608	\$771,000
IL	\$1,313,000	\$490,000
MA	\$ 40,000	\$300,000
MI	\$ 744,470	\$ 10,000
MS	NONE	NONE
NY	\$1,860,705	NONE
TX	\$130,449	NONE
VA	\$114,568	1 (no \$ info)
WI	\$385,867	\$242,000
SUBTOTALS	\$5,705,667	\$1,813,000
GRAND TOTAL = \$7,518,667		

¹⁰ See, for example, Byron R. Johnson, “A Better Kind of High,” (University of Pennsylvania Center on Research on Religion and Urban Civil Society, 2001).

TABLE B
Additional/Updated Information
(AP and other news accounts, 2001)

<u>State</u>	<u>Amount</u>	<u>#</u>
AR	\$ 1,000,000 est.	14
IN	\$3,500,000	40
MD	at least \$1,500,000	at least 1
MI	\$ 30,000,000	150 ¹¹
MO	\$ 1,005,000	12 est.
NC	at least \$363,000	at least 2
OH	\$17,000,000+ est.	at least 31
TX	\$ 5,000,000 ('00-'01)	23
WA	\$ 951,000 (since '98)	# not given
WVA	\$ 350,000 (at least)	1 (at least)
SUBTOTAL = at least \$60,669,000		

¹¹\$2 million was awarded in 19 contracts to FBOs with no formal history of receiving government funds.

TABLE C
Charitable Choice Contracts with “New Players”
Results from 9-State Study

<u>State</u>	<u>Direct Contracts</u>	<u>Indirect Contracts</u>
CA	\$1,116,608	\$771,000
IL	\$1,313,000	\$490,000
MA	\$ 40,000	\$300,000
MI	\$ 301,300	\$ 10,000
MS	NONE	NONE
NY	\$ 150,000	NONE
TX	\$ 95,449	NONE
VA	\$114,568	1 (no \$ info)
WI	\$ 85,830	\$242,000
SUBTOTALS	\$3,216,755	\$1,813,000
GRAND TOTAL = \$5,029,755		

TABLE D
States' Efforts to Reach Out to FBOs

Faith-based Liaisons

*14 states have formally designated a staff person(s) to serve as liaisons to the faith community (AZ, AR, CA, CO, GA, MD, NJ, NY, NC, OH, OK, PA, TX, VA).

Conferences

* VA, CO, TX, NJ, IN, OH and PA are among those that have sponsored state wide or regional info conferences

*OK and UT are currently planning such events

Technical Assistance

*IN and TX have formal systems for providing TA to FBOs

Monitoring/Tracking CC Implementation

*TX has a formal system

APPENDIX A
F-B Contracting in Context in WI
2000

<u>Region Name</u>	<u>Total Contracting</u>	<u>FB Contracting</u>	<u>%</u>
Ashland Region	\$2,273,703	\$360,922	16%
Eau Claire Region	\$723,004	\$41,400	6%
Green Bay Region	\$5,762,893	\$920,088 ¹²	16%
Milwaukee W-2 Agencies Employment Solutions	\$10,038,462	\$400,400	4%
YW-Works	\$3,112,353	\$115,200	3.7%
OIC	\$41,545,000	\$77,500	<1%
Maximus	\$1,491,084	\$171,000	11.4%
UMOS	\$1,518,464	\$92,465	6%

*Data provided by Wisconsin's Department of Workforce Development

¹²Does not include contracts with two FBOs that receive money on a per client basis.

Mr. CHABOT. Reverend Jones.

**STATEMENT OF REVEREND DONNA LAWRENCE JONES,
COOKMAN UNITED METHODIST CHURCH, PHILADELPHIA, PA**

Reverend JONES. My name is Reverend Jones, Donna Jones, from Cookman United Methodist Church in north Philadelphia. Cookman Church was reformed about 10 years ago in 1989. The church is a relatively small congregation, a hundred members. And we are in a community that is considered economically depressed. The average income of the 30,000 residents just in our zip code is about \$12,000 per year. The unemployment rate is about 62 percent.

The majority of people in our community are either unemployed or have never been employed. There is a high incidence of drugs and alcohol addiction and 65 percent of ex offenders in our State return to our zip code at some place along the way.

Our church noticing all of these things, because our community is—our church community is made up of residents in the community, about 7 or 8 years ago started to do the traditional churchy things that we do could do. And that was, we offered energy assistance, grants just through the local church, help people to get their

lights turned back on and to buy fuel. We offered food, we offered clothes. We offered after-school care for the children. What we started to see as time when on, we started to see the same people coming back over and over again because those direct assistance strategies and enabling people to overcome poverty.

So the membership came together, certain representatives came together of that membership to form a team to determine what we could do to help empower people to move beyond where they were. We decided that at the same time we would offer what assistance we could on a greater level. So we started to offer some job coaching, some job placement activities, just through a volunteer basis. But we are only able to help a few people a month. We weren't able to do it on a large scale. We also found that we were limited in what we were able to do because at that time, I think I was the only member of the church that had a college degree and we had very—not a whole lot of people with high school diplomas. So it becomes difficult to really empower people when empowering volunteers had issues of empowerment themselves.

So we decided that we wanted to continue with the church to do what we were doing, we started to look at how we could expand, how we could raise money to expand. And at that time we heard about the charitable choice provision. Our church does not have a separate secular 501(c)(3) but as a united methodist church we do fall under the 501(c)(3) denomination. Because we are a small church, we were still solidifying our church board. And it was going to put our church in an uncomfortable position, and probably an unnecessary position to try to do all the work necessary at that time to continue to grow the church, continue to do the ministry and set up a separate organization. So we heard about the charitable choice provision. What it said to us was we could really concentrate on ministry, we could continue to do what we were doing, we could expand what we were doing and we could do it as a local church, so we signed on.

Our first grant was a community solutions grant and that grant, the basis of it was that the State of Pennsylvania looked out and reached out to the community to find out what organizations were already doing in their communities to empower citizens and enable persons to move from welfare to sufficiency. We decided that that was the grant for us. We went after it. And to our surprise we received it.

That grant allowed us to do a couple of things that we wouldn't have been able to do otherwise. It allowed us to expand our capacity to reach people. So instead of reaching one or two people per month, we would reach 20 or 30. It also allowed us to hire professional staff. We did not expand our staff greatly, but we were able to hire a job developer and we were able to hire a case manager which we would not have been able to do and we did not have volunteers within our organization who could do it. And we had in the past tried to solicit people from the suburbs to come in and do it, or from other sections of Philly to come in and do it, but they weren't exactly willing to come into north Philly to do it. So—but we were able to hire, and that made a big difference in our program.

We also learned a lot. We received a State monitor. And the monitor helped us with capacity building. The monitor helped us to connect with the State databases, which tremendously increased our ability to follow up. In the long run, what we have is much, much, much more reach than we would have had without charitable choice. And for us, to be a relative unsophisticated organization, that was very exciting to us.

We also found that we were offering something that was unique to our community. People were becoming very confused in county assistance offices and other larger organizations where they were going for services and they would come back to us to find out what was going on. So we found that because we were in the community and people knew us, and they were passing by into the church. We were safe; they would come in to us and they would share at levels that they were embarrassed to share in the social organizations that were around.

We also found that we got greater information about family situations, about domestic violence, about other barriers to employment that were happening in the house than other agencies were receiving. We also were—because we were a church, there was an expectation that was different than what they would have expected to have seen in a local agency. So people expected that we would help them. People expected we wouldn't just run in and take their children away from them. People expected us to go the extra mile. Also because we were a church, we were more flexible in our ability to deliver services.

When a young woman comes in to us and this has happened before, and she has just been abused and she is having a hard time and she can't meet the 5-day requirement or you get cut off that we had at the time in Pennsylvania, she could come in and say look, you know, I am really having a hard time, my husband just beat me up, I don't know what to do. We can make phone call after phone call, but if that is Friday night, there is not a whole lot of options for here. And there is not a whole lot of options that she was willing to do and leave their children. But because we are a church and not an agency, we were able to say look, we have got some cots, we have some food, we have got some space. You can stay here and we have some volunteers to stay with you.

Those are the types of things that churches can do that agencies often can't do for all kinds of reasons. And we have made those kind of interventions on many occasions. And also, have been able to go with people—a lot of times people are having trouble just fulfilling their work requirements or fulfilling other requirements of education and employment, run into other barriers that relate to maybe sick family members or things like that.

Because we were a church, we are able to go out in the community in a larger radius and were able to visit with people and extended families that might not even be on assistance. And what we found is that combination of what we normally do as a church, plus the financial benefit of being able to have a qualified staff, plus the technical assistance, has caused us to really be able to reach out and in a much broader and deeper level. We are seeing a lot of repeat business from not just our clients, but they are coming back with their children, they are coming back with brothers and sisters

and others in the community that had fallen through the cracks. I mean, because of what we have done to help enable family members. I think I have to stop there.

Thank you.

Mr. CHABOT. Thank you very much, Reverend Jones. We appreciate it.

[The prepared statement of Reverend Donna Lawrence Jones follows:]

PREPARED STATEMENT OF REVEREND DONNA LAWRENCE JONES

Like many urban African American churches, Cookman already had a history of social ministries designed to empower its community. Although many social service agencies exist in the neighborhood, issues of distrust, mis-information, and disrespect for poor people's issues caused persons in need to seek alternative solutions through various community based-organizations (including churches) to their life-challenges. All of our outreach efforts have always been open to all residents regardless of faith commitment.

As welfare reform became a reality, we started to see more and more residents coming to us for referrals, tutoring and other assistance. We also found many residents were very confused by the system and by their county assistance office personnel. In order to meet their needs we chose to utilize the Charitable Choice provision to compete for federal funding for our what was becoming an increased demand on assistance for persons receiving TANF (Temporary Assistance to Needy Families) benefits.

We have also, like many churches in our area, chosen not to actively proselytize persons in need of our help, feeling that it is not appropriate to in any way force religion on the needy. Therefore, when charitable choice came our way, we did not see that it would impede what we were used to doing in anyway.

We did see it as a Godsend. For years, our small congregation had been providing various services to needy families with a very limited budget. This put a tremendous strain on too few volunteers. And, since we are not a "professional church" (Other than myself, there is only one other person with a post-high school diploma) we started to feel the weight of trying to provide better quality services in response to person's felt needs. We found our community agencies tried hard, but were unable to handle the volume of issues found in our high-risk community alone. The additional funding allowed us to hire targeted staff, and improve our curriculum. The extra staff actually made it easier to solicit volunteers, as they were not so easily burnt-out.

Our experience with the State of Pennsylvania has overall been very good. We had a challenging start as we each tried to understand the freedoms and restrictions of Charitable Choice. But we worked together with our monitor to develop what we feel has been a beneficial collaboration for the citizens in our area who have fallen through the systemic cracks. This help enabled us to expand our program of education, life-skills, job placement, job development and computer literacy, and children and youth services.

We offer a voluntary Bible Study at the beginning of the day. We advertise that we have a Christian program, but we are careful during orientation and on a regular basis through out the program to let clients know that religious activities are not mandatory and that they have every right to pursue other valuable activities at the same time, such as: computer lab, job search activities, or counseling/case management. So far we have served 182 women. At last count, our job placement rate at 20 hours/week or greater was 87%.

We have a separate account for funds received for the welfare to work program, and the church continues to have to meet its own operating and ministry expenses. We make a distinction (both now and before charitable choice) between what we do in mission and what we do in evangelism. We do not see social service (helping the needy) as evangelism so we have never had an issue with trying to proselytize someone who needs help.

The government collaboration has increased the level of bureaucracy and paper work we were used to. However, for the most part this has been welcomed. We have better records than we would have every dreamed of having before and we are linked to a State Wide database that has been exceptionally helpful to us in follow-up with the families we help. While some of the paper requirements are tedious, most are necessary such as financial records, case notes, accurate client files, and employer and family information. Although it was a challenge for us in the early

months, now that we've been at it for a few years it has been a tremendous blessing for follow-up.

The State also has not in anyway impacted our free exercise of religion. They have not in any way interfered with the organization or structure of our church. Nor seemed to care—appropriately.

Lastly, churches receiving funds for various programs from non-religious sources is not new. Many foundations and private donors fund church programs and place guidelines on how those funds are to be used. Churches make choices daily to accept or reject funding based on the donor's wishes. We believe that churches are more than able to follow clearly defined guidelines when receiving government funding as well. We are also capable of declining funds if we disagree with the way a contract is asking us to define a project. Churches also make choices daily regarding when and how to share our faith. Organizations that have overt proselytization as part of their methodology are not likely to compete for government funds.

To us, the bottom line remains that churches have been actively engaged in providing much needed services to their communities for quite some time. However, we have not been invited to compete as peers with other non-profit agencies for the funding necessary to support our work. We have been invited to set up separate secular entities under which to provide charitable services, but this to us takes away from our integrity as a sacred agency. The word sacred does not say anything about how we share or don't share our faith. It does speak to our motivation for doing our work. It means that we hold our responsibilities to help the needy extremely important and get great satisfaction from being there for people as agents of God's love. This means that we tend to go the extra mile, make the extra call, visit the extra family member in the hospital (who may not be particularly entitled to our service): all in an effort to bring wholeness to our community.

Lastly, Charitable Choice has not changed our church—we still worship on Sundays, have pot-luck dinners, attend choir rehearsal, Bible study and Sunday School, and go out evangelizing the community on Sundays. It has however improved our ability to provide quality help to the needy who know us, trust us and expect a bit more dignity and love from us.

Mr. CHABOT. Mr. Clingman.

**STATEMENT OF CHARLES CLINGMAN, EXECUTIVE DIRECTOR,
JIREH DEVELOPMENT CORPORATION, CINCINNATI, OH**

Mr. CLINGMAN. Before I begin, I would like to thank you for the opportunity to present my views and experiences as director of a faith based organization.

Mr. CHABOT. Could you pull the mike down a little bit more.

Mr. CLINGMAN. The debate concerning the relationship between church and state began centuries ago and continues still in 2001. It is quite interesting to note that while the leaders of both sides continue to argue and disagree, many faith-based grassroots agencies are persevering, determined to provide services to the community that are so desperately needed for the survival of individuals who are in immediate crisis. There are many excellent programs in our communities across the United States that are making a tremendous impact upon individuals' lives. However, if they are at all like the program I am here representing, they are struggling to survive financially in order to deliver these services.

The government has been in the welfare business for almost 70 years. However, it has only served to perpetrate a welfare mentality. In 1996, as a direct result of Personal Responsibility and Work Opportunity Reconciliation Act, States have been given 3 years to undue this welfare mentality that it took almost a quarter of a century to build. The problems, challenges, abuses and the like did not occur in the community overnight. It is a direct result of poverty, racism and yes, in some instances, absolute laziness. However, it is going to take more than 3 years to make long-term

changes necessary to impact not only the life of one generation but also of the generations to come.

There are various reports and books currently being published about the affects of welfare reform, including lessons on welfare reform and analysis of AFDC caseload and past welfare-to-work programs by Dave and June O'Neill and economic conditions and welfare reform by Sheldon Danzinger. We agree with their prognosis. People will be returning to welfare. What are we going to do to keep them from coming back?

I want to take the next few minutes to tell about a program that is more than a program. It began as an inspired thought in the heart of a mind of an individual who just happens to be a bishop of a 30,000 member congregation in Cincinnati, Ohio. It is a positive and successful example of the good that happened when a State and local government was willing to push the envelope and took a chance on what was 4 years ago a new and emerging faith-based program called the Exodus Program.

Christ Emmanuel Christian Fellowship began its social service agency in 1993 to address many of the requests from the community at large for emergency food, utility and rent assistance. In addition, the agency also featured a special need adoption recruitment component. After 2 years of servicing the community, leadership was challenged to get to the root of the problem instead of continually responding to individuals in crisis. Because our recidivism rate was very high, we instituted a policy that individuals would only receive assistance from our agency once every 6 months. As a direct result, we began to receive calls from other agencies requesting information and/or assistance in helping the same persons who we had turned down previously.

In 1996, on a Sunday morning, Bishop Dantley began to speak inspirationally of an agency that would get to the root of people's problems instead of giving them temporary assistance. He spoke of an agency that would instill vision and open people's eyes to destiny and purpose and give them a sense of hope and that their current circumstances did not have to determine their future. This was the initial birth of what was known as the Exodus Program.

The Exodus Program held its first work development class in April 1997. Over the past 4 years, we have worked to design and fine-tune a program that would teach people how to work, stay on a job, manage a budget, pay their bills, prepare healthy foods and how to become self-sufficient instead of depending upon an agency to bail them out of every crisis.

We believe if we increase an individual's understanding of vision, destiny and purpose, the building blocks of short- and long-range goals will fall into place. This leads to greater job placement, retention, and the fulfillment of individual goals and success. We have served 2,398 individuals since the Exodus Program begun 4 years ago, and we have experienced overwhelming success. Of the 2,398, we have served 494 in job readiness training and 1,904 individuals in case management. Our graduation rate is 71 percent and our employment education rate is 69 percent.

Exodus has received contracts from the city, county and the State of Ohio that total approximately \$3,394,000. It's important to note that because the majority of our contracts are performance-

based, and in many instances we had to depend upon the county Department of Human Services for referrals, we have not realized the actual 3 million in payment for services.

The Exodus Program is a component of Jireh Development Corporation, which is a 501(c)(3) initiative of Christ Emmanuel Christian Fellowship. Jireh has its own board of directors, which is comprised of members within the faith community. All of our board members are not members of Christ Emmanuel. Exodus is comprised of 21 employees representing seven different churches within the Cincinnati area.

As executive director of the Jireh Development Corporation, I have worked with my leadership team to develop a working team of individuals who practice integrity, service, excellence, and cooperation. I know there is great debate over whether or not churches should accept money from the government.

However, we answered that question for ourselves over 4 years ago when we received our first contract. We faced great debate even amongst volunteers who began working with Exodus and who, when they were challenged to live the life rather than preach it, were very frustrated and worried that we had sold out. However, we believe it is very easy to preach to individuals than it is to live your life, so that a marked difference in you as a Christian is desired.

When people see the difference, they will ask the important question. We adopted this stance 3-1/2 years ago and we have seen success that meets our contractor's approval as well as our Chief Executive Officer (God). Jireh believes that success lies not in how many people we pray for or how many people accept Christ as their Lord and Savior. We believe that we were called to plant seeds of truth, hope and character. Every farmer approaches planting from a different point of view, depending on what they are trying to grow, the region, the market and the soil. I believe it was Mother Theresa who said plant the act, reap the habits, plant the habits, reap the virtue, plant the virtue, reap the character, plant the character, reap the destiny. We are planting expecting to reap character, destiny and success in the lives of the individuals we serve.

We said long ago that Christianity is our faith. It is what we live, breathe and practice. However, it is our life-style not to thrust it upon the people who we are called to serve. Therefore, we do not have bible study as part of our curriculum. Prayer is available to those who request it before or after class. Our staff is diverse culturally, racially in gender and in faith. There are individuals on board who are single parents as well as persons who are part of a two-parent household.

Mr. CHABOT. Could you possibly wrap up because we are over the 5 minutes here. You got a ways to go?

Mr. CLINGMAN. We can quit.

Mr. CHABOT. I didn't mean to cut you off there, but we may be able to get to some of the things you were going to raise in questions. We will be following up with questions in a few minutes. Tough to cut off a guy from your hometown, I tell you. But thank you for your testimony.

[The prepared statement of Charles Clingman follows:]

PREPARED STATEMENT OF CHARLES CLINGMAN

Before I begin I would like to thank you for the opportunity to present my views and experiences as the director of a faith-based organization.

The debate concerning the relationship between the church and the state began centuries ago and it continues still in 2001. It is quite interesting to note that while the leaders of both sides continue to argue and disagree, many faith-based grassroots agencies are persevering, determined to provide services to the community that are so desperately needed for the survival of individuals who are in immediate crisis. There are many excellent programs in our communities across the United States that are making a tremendous impact upon individual's lives. However, if they are at all like the program that I am here representing, they are also struggling to survive financially in order to deliver these services.

The government has been in the welfare business for almost seventy years. However, it has only served to "perpetuate" a welfare mentality. In 1996, as a direct result of the Personal Responsibility and Work Opportunity Reconciliation Act, states have been given three years to undo this "welfare mentality" that it took almost a quarter of a century to build. The problems, challenges, abuses, and the like did not occur in the community overnight. It is the direct result of poverty, racism, and yes, in some instances, absolute laziness. However, it's going to take more than three years to make the long-term changes necessary to impact not only the life of one generation, but also of the generations to come. There are various reports and books currently being published about the effects of welfare reform including *Lessons on Welfare Reform: An Analysis of the AFDC Caseload and Past Welfare to Work Programs* by Dave M. O'Neill and June Ellenoff O'Neill and *Economic Conditions and Welfare Reform* by Sheldon H. Danziger. We agree with their prognosis—people will be returning to welfare—what are we going to do to keep them from coming back?

I want to take the next few minutes to tell you about a program that is more than a program. It began as an "inspired" thought in the heart and mind of an individual who just "happens" to be a bishop of a three thousand-member congregation in Cincinnati, OH. It is a positive and successful example of the good that happened when a state and local government was willing to "push the envelope" and took a chance, on what was four years ago, a new and emerging faith-based program called The Exodus Program.

Christ Emmanuel Christian Fellowship began a social service agency in 1993 to address many of the requests from the community at-large for emergency food, utility and rent assistance. In addition the agency also featured a special needs adoption/recruitment component. After two years of serving the community, the leadership was challenged to get to the root of the problem instead of continually responding to individuals in crisis. Because our recidivism rate was very high, we instituted a policy that individuals would only receive assistance from our agency once every six months. As a direct result we began to receive calls from other agencies requesting information and/or assistance in helping the same persons whom we had turned down previously.

In 1996, in a Sunday morning service (the church's boardroom), Bishop Michael E. Dantley began to speak inspirationally of an agency that would get to the root of people's problems instead of giving them temporary assistance. He spoke of an agency that would instill vision and open people's eyes to destiny and purpose and give them a sense of hope that their current circumstances did not have to determine their future. This was the initial birth of what has become known as The Exodus Program.

The vision for The Exodus Program is to see persons who are currently in the system of the department of human services, or unemployed, or classified as the working poor, freed from the bondages that consistently hold them back. It is to also see them freed from a dependent, victim mentality.

This will be accomplished through ministry to the whole man with the inculcation of vision and destiny into the thinking and thought processes of those involved in the ministry, as well as the building and/or refining of skills necessary to succeed in everyday life.

Those persons who have fully participated in Exodus will be able to:

- Obtain employment and maintain the same, Handle their personal financial responsibilities,
- Maneuver the labyrinth of daily interactions with business, governmental, and educational institutions,
- Involve themselves in preventative medical procedures, and

- More importantly, come to live the *more than abundant life*.

They will also be able to interface with and handle daily situations that arise in regular family life and walk in wholeness throughout the process of change, transition, and ultimate restoration.

The Exodus Program held its first workforce development class in April 1997. Over the past four years we have worked to design and fine-tune a program that would teach people how to go to work, stay on the job, manage a budget, pay their bills, prepare healthy foods, and how to become “self-sufficient” instead of depending upon an “agency” to bail them out of every crisis. We believe that if we increase an individual’s understanding of vision, destiny, and purpose, the building blocks of short and long-term goals will fall into place. This leads to greater job placement, retention, and the fulfillment of each individual’s goal of success.

We have served 2398 individuals since Exodus began four years ago and we have experienced overwhelming success. Of the 2398 we have served 494 in job readiness training and 1904 individuals in case management. Our graduation rate is at 71% and our employment/education rate is 69%. Exodus has received contracts from the city, the county, and the State of Ohio that total approximately \$3,394,750. It is important to note that because the majority of our contracts are performance-based and in many instances we have had to depend upon the county department of human services for referrals we have not realized the actual \$3,000,000 in payments for services.

Our grant/contract history is as follows:

Hamilton County Department of Human Services (1997)

Job Readiness—\$50,000

City of Cincinnati (1997)

Job Readiness for non-TANF—\$15,000

Ohio Department of Human Services (1998)

Retention Services—\$50,000

Faith-based Conference—\$25,000

Hamilton County Department of Human Services (1998)

Job Readiness, Retention—\$122,000

Hamilton County Department of Human Services (1999)

Case Management Contract—\$230,159

Job Readiness, Retention, Recruitment Contract—\$324,685

Hamilton County (1999)

Construction Workforce Development for African Americans—\$162,000

Hamilton County Department of Human Services (2000)

Case Management Services for Term-Limit HCDHS clients—\$762,123

Short Term Case Management Services—\$524,783

Ohio Department of Jobs and Family Services (2000)

The Joseph Project for African American Males (non-custodial fathers)- \$875,000

Cincinnati State Community and Technical College

Job Readiness, placement, case management for Cincinnati Empowerment Zone residents

Employment and Training Division of the City of Cincinnati

African American Male Job Readiness/placement—\$67,500

TANF Job Readiness/placement—\$186,500

The Exodus Program is a component of The Jireh Development Corporation. Jireh is an initiative of Christ Emmanuel Christian Fellowship with it’s own separate 501 (c) (3) non-profit corporation status. Jireh has its own board of directors comprised of individuals from within the faith community throughout the city of Cincinnati. All of our board members are not members of Christ Emmanuel. Jireh mission is to build houses for low-to-medium income individuals who might not ever be able to purchase a new house due to income restrictions. To date we have built 6 units of a 15-unit single-family housing project adjacent to Christ Emmanuel. Each town-house is approximately 1600 square feet and features three bedrooms, a living room, dining room, 2° baths, basement, and a two-car garage. We also have 112 units in development to be completed over the next one to three years. Included in the development is a new park for the neighborhood children.

Exodus is comprised of 21 employees representing seven different churches within the Cincinnati area. As the Executive Director of Jireh Development Corporation, I have worked with my leadership team to develop a working team of individuals who practice integrity, service, excellence, and cooperation.

We believe that every agency that we contract with is a valuable customer. As such if we believe that we cannot meet our customer’s expectations it becomes our responsibility not to enter into a contract with them. We enter into contracts solely

based upon vision and mission not because we need money—our vision drives everything that we do.

I know that there is great debate over whether or not churches should accept money from the government. However, we answered the question for ourselves over four years ago when we received our first contract. We faced great debate even amongst the volunteers who began working with Exodus, and who, when they were challenged to live the life rather than preach it, were very frustrated and worried that we had sold out. However, we believe that it is very easy to preach at individuals than it is to live your life every day so that there is a marked difference in you as a Christian. When people see the difference they will ask the important questions. We adopted that stance three and a half years ago and we have seen success that meets to our contractor's approval as well as to our Chief Executive Officer (God).

Jireh believes that success lies not in how many individuals you pray for, or in how many individuals accept Christ as their Lord and Savior. We believe that we are called to plant seeds of truth, hope, and character. Every farmer approaches planting from a different point of view depending on what they are trying to grow, the region, the market, and the soil. I believe that it was Mother Theresa who said, "Plant the act, reap the habits, plant the habits, reap the virtue, plant the virtue, reap the character, plant the character, reap the destiny." We are planting expecting to reap character, destiny, and success in the lives of the individuals we serve. We settled long ago that Christianity is our faith, it is what we live, breathe and practice. However, it our lifestyle not to be thrust upon the people that we are called to serve. Therefore we do not have bible study as a part of our curriculum. Prayer is available for those who request it before or after classes. Our staff is diverse culturally, racially, in gender and in faith. There are individuals on board who are single parents as well as persons who are part of a two-parent household. One of our primary strengths is the heart of the individuals who serve our participants. They love them and accept them for who they are, but at the same time they see the potential for greatness that lies within everyone. We serve persons who are struggling with drug and alcohol addictions, persons with felony convictions, individuals with little to no work history, persons who have been on welfare all of their lives, generational welfare recipients, persons who have dropped out of high school, with no hope, no dreams, no inspiration, and no understanding of the wealth of promise that this country holds for them.

Do I personally believe that the state and faith-based agencies can work together to provide services to the community? Emphatically I do. It was the church that originally served as the light within the community by providing assistance to the fatherless, the widows, and the stranger before welfare became the responsibility of the government in 1935. However, I believe that it is a question that each agency has to ask and answer for itself based upon its vision and mission. What works for Exodus might not necessarily work for every other faith-based organization and the government is going to be hard-pressed to develop a model that will fit and satisfy everyone.

During our last four years we have met the critics as we bid for contracts at prices that were at a third of what the "big dogs" were charging. When I say "big dogs" I refer to those agencies who have been in the pockets of the government for years, but who have delivered next to nothing for the dollars they have received. We have been slandered, criticized and refused based solely upon our commitment to perform our services at a competitive and a fair price. However, we have also been commended, praised, and congratulated on our performance and our courage to step outside of the box.

We were faith-based before it was okay to define yourself as such to the community at-large. Bishop Dantley testified before the State Budget Committee on Welfare Reform in June of 1997 before the state's definition of welfare reform was decided upon. His testimony contributed to the state adopting HB403. Individuals were given 36 months of TANF, with a 12-month hiatus and the option of returning for a final 24 months. This was much better than the lifetime limit of 24 months that they were originally considering.

I personally believe that The Exodus Program is an excellent example of how faith-based organizations and government can work together to achieve a common goal. However, it will take commitment and flexibility on the part of all involved to see this thing work.

I want to thank you for the opportunity to share with the committee.

Mr. CHABOT. And our final witness will be Reverend Walker. Welcome.

**STATEMENT OF REVEREND J. BRENT WALKER, EXECUTIVE
DIRECTOR, BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS**

Reverend WALKER. Thank you, Mr. Chairman, and Members of the Subcommittee for this opportunity to speak on a very important matter. The Baptist Joint Committee serves 14 different Baptist bodies focusing on public policy issues concerning religious liberty and its essential constitutional corollary, the separation of church and state. For 65 years the Baptist Joint Committee has adopted a well-balanced and sensibly centrist approach to church/state issues. We take seriously both religion clauses in the first amendment, no establishment and free exercise, as essential guarantors of our God-given religious liberty.

We join others in applauding President Bush's recognition of religion's vital role in addressing social ills, but we believe that religion will be harmed, not helped, by charitable choice—redirecting billions of government money to fund pervasively religious enterprises such as houses of worship. So we oppose charitable choice not because we are against faith-based social ministries, but because of our desire to protect religious freedom.

The problems with charitable choice are many. First, charitable choice is unconstitutional. It promotes religion in ways that breach the wall of separation between church and state. The Supreme Court has long said that governmental financial aid to pervasively religious organizations, even for ostensibly secular purposes, violates the no-establishment clause in the first amendment.

Second, charitable choice results in excessive entanglement between religion and government. It is an iron law of American politics that government regulates what it funds. And normally that is good. We should have accountability for the funds that the government spends. But it raises serious concerns when government becomes entangled in religious affairs and concerns. This is what a Virginia pastor friend of mine meant, I think, when he asked government not to give us any pats on the back, for all too often a friendly pat on the back by Uncle Sam turns into a hostile shove by Big Brother. Some of the regulation is outlined in the charitable choice provision itself. Other Federal and State laws and regulations are triggered by the expenditure of Federal tax money.

Third, charitable choice dampens religion's prophetic witness and voice. Religion has historically stood outside of government's control serving as a constant critic of government. Accepting government funding creates a dependency on government that will have the effect of silencing the prophetic witness. How can religion raise a prophet's fist against government when it has the other hand open for a handout? It simply can't do both at the same time.

Fourth, charitable choice authorizes religious discrimination in employment. It explicitly allows religious organizations to retain their title VII exemption, even in a program substantially funded by government money. Allowing religious organizations to discriminate in the private sector is a welcomed accommodation of religion. But to subsidize religious discrimination with tax dollars is an unconscionable advancement that simultaneously turns back the clock on civil rights in this country.

Fifth, charitable choice encourages unhealthy rivalry among religious groups. We enjoy peace and harmony in this country despite

our dizzying diversity for the most part, because government has stayed out of religion. I heard your colleague Chet Edwards say on several occasions that if he maliciously wanted to try to harm a religion in America, he could think of no better way to do it than to put a pot of money out there and let churches fight over it with government picking and choosing which religions will get the money. I agree with Representative Edwards. It is a recipe for religious conflict.

Simply put, charitable choice is the wrong way to do right. Thankfully, there are right ways to do right. There is a better way. Government and religion may cooperate in the provision of social services in many ways that are good for government, good for religion, good for the taxpayers and good for the people served.

First, houses of worship may continue to pay for social service ministries the old-fashioned way with tithes and offerings and funds from other private sources, and government may and actually should encourage increased private giving through, for example, expanding the deductibility rules for charitable gifts for the 70 million Americans that do not currently itemize on their taxes.

Second, houses of worship may spin off religiously affiliated organizations to accept tax funds and to provide social service ministries much in the way that Mr. Clingman's operation does. Religiously affiliated organizations can minister out of religious motivation and even make available some privately funded and separately offered religious activities as long as they do not proselytize or require religious worship or instruction or discriminate on the basis of religion in hiring or in providing services.

Third, government should lift onerous restrictions on houses of worship that unreasonably interfere with their ministries. Congress, to its credit, has already taken the lead in passing the Religious Land Use and Institutionalized Persons Act last fall, which protects religious organizations from burdensome zoning laws.

And finally, government and religious organizations, even pervasively religious ones, may carefully cooperate in creative non-financial ways.

These illustrations are just some of the ways in which we are able to forge, I think, a win-win situation. Social services can be delivered by religious organizations. The autonomy of pervasive religious organizations can be protected from government regulation, and the constitutional values that promote religious liberty, such as the separation of church and state, can be preserved. We all want to do right to help those in need. Let us all do it in the right way.

Mr. CHABOT. Thank you, Reverend Walker.

[The prepared statement of Reverend J. Brent Walker follows:]

PREPARED STATEMENT OF REVEREND J. BRENT WALKER

INTRODUCTION

Thank you, Mr. Chairman and Members of the Subcommittee, for this opportunity to speak to you on a matter as important as religious liberty.

I am J. Brent Walker, executive director of the Baptist Joint Committee on Public Affairs (BJC). I am an ordained Baptist minister. I also serve as an adjunct pro-

fessor of law at Georgetown University Law Center, where I teach an advanced seminar in church-state law. I speak today, however, only on behalf of the BJC.¹

The BJC serves the below-listed Baptist bodies,² focusing exclusively on public policy issues concerning religious liberty and its constitutional corollary, the separation of church and state. For sixty-five years, the BJC has adopted a well-balanced, sensibly centrist approach to church-state issues. We take seriously both religion clauses in the First Amendment—No Establishment and Free Exercise—as essential guarantors of God-given religious liberty.

No principle is more important to Baptists and the BJC than religious liberty and separation of church and state. At our best, we embrace the words of John Leland, a Virginia Baptist evangelist, who said over 200 years ago: “The fondness of Magistrates to foster Christianity has caused it more harm than all the persecution ever did.” That is why for the last five years the BJC has fought “charitable choice” proposals to allow government to fund religious ministries.

THE PROBLEMS WITH “CHARITABLE CHOICE”

“Charitable choice”—a specific legislative provision that allows pervasively religious organizations, such as houses of worship, to receive government funds to subsidize social services—was first codified in 1996 as part of the welfare reform law.³ Since then, Congress has passed three additional pieces of legislation containing “charitable choice” provisions.⁴

For the first time since its inception five years ago, “charitable choice” has attracted national attention and scrutiny in the last few months.⁵ Today’s hearing—the first ever on the topic of “charitable choice”—further attests to that fact. The cause of the focused attention on this important topic is undeniably the attention given to “faith-based initiatives” by President George W. Bush. President Bush opened six federal offices of Faith-Based and Community Initiatives during his second week in office and has listed faith-based proposals, including the expansion of “charitable choice,” as one of his top domestic priorities for his administration’s first year.

We join others in applauding President Bush’s recognition of religion’s vital role in addressing social ills. But we believe religion will be harmed, not helped, by directing government money to fund pervasively religious enterprises.

So we oppose “charitable choice”—not because we are against faith-based social ministries—but because of our desire to protect religious freedom.

As the BJC has said for several years, “charitable choice” is the wrong way to do right.⁶ The problems with “charitable choice” are many.

First, *“charitable choice” is unconstitutional*. “Charitable choice” promotes religion in ways that breach the wall of separation between church and state. The United States Supreme Court has long said that governmental financial aid to pervasively religious organizations, even for ostensibly secular purposes, violates the Establishment Clause of the First Amendment.⁷ Pervasively religious entities (like houses of worship and parochial schools)—ones that are so fundamentally religious that they cannot or will not separate secular and religious functions—should be disqualified from receiving government grants because to fund them is to fund religion.

¹My curriculum vitae is attached. Neither I nor the BJC has received a federal grant or contract in the current or preceding two fiscal years.

²Alliance of Baptists, American Baptist Churches in the U.S.A., Baptist General Association of Virginia, Baptist General Conference, Baptist General Convention of Texas, Baptist State Convention of North Carolina, Cooperative Baptist Fellowship, National Baptist Convention of America, National Baptist Convention U.S.A. Inc., National Missionary Baptist Convention, North American Baptist Conference, Progressive National Baptist Convention, Inc., Religious Liberty Council, and Seventh Day Baptist General Conference.

³Personal Responsibility and Work Opportunity Reconciliation Act, Public Law 104–193 [1996].

⁴Community Services Block Grant Act, Public Law 105–285 [1998]; the Children’s Health Act of 2000, Public Law 106–310 [2000]; and the New Markets Venture Capital Program Act, Public Law 106–554 [2000].

⁵Contrary to some strains of popular opinion, cooperation between government and religion in the provision of social services is not a new idea. It predates this Administration’s “faith-based initiatives” and even the 1996 “charitable choice” provision. This cooperation—often between government and religiously affiliated organizations that are not pervasively religious—demonstrates the right way for religion and government to partner in providing social services to those in need.

⁶Indeed, the BJC Board adopted a “Resolution on the Charitable Choice Provision in the New Welfare Act” as early as October 8, 1996.

⁷See *Bowen v. Kendrick*, 487 U.S. 589 (1988); *Roemer v. Board of Public Works*, 426 U.S. 736 (1976); *Hunt v. McNair*, 413 U.S. 734 (1973); and *Tilton v. Richardson*, 403 U.S. 672 (1971).

In a pervasively religious institution, the money that goes into one pocket goes into all of its pockets. Proponents of “charitable choice” who claim that the provision does not violate the separation of church and state point to a provision that bars government funds from paying for “sectarian worship, instruction or proselytization.” However, this so-called “protection” is illusory since privately-funded sectarian worship, instruction or proselytization may operate throughout the tax-funded program. Even if one purports to pay for only the soup and sandwich through a government grant, these funds will necessarily free up other money to pay the preacher to bless the meal and deliver a sermon after dinner. In short, “charitable choice” unconstitutionally funds government services that are delivered in a thoroughly religious environment.

Second, “charitable choice” violates the rights of taxpayers. Just as funding pervasively religious organizations violates the First Amendment’s Establishment Clause, taking my taxes to pay for your religious organization, or vice versa, violates the First Amendment’s free exercise principles. Although the Supreme Court has never ruled that taxpayers have standing to assert a free exercise challenge to a funding scheme, I believe this is exactly what Thomas Jefferson had in mind when he said that “to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical.”⁸ It was over 200 years ago, and it is today. Government should not be allowed to use your tax money to promote my religion.

Third, “charitable choice” results in excessive entanglement between government and religion. It is an iron law of American politics that government regulates what it funds. This is what a Virginia pastor friend of mine meant when he asked government not to give us any “pats on the back.” For all too often a friendly pat by Uncle Sam turns into a hostile shove by Big Brother.

Some regulation is outlined in the “charitable choice” legislation itself. As already mentioned, religious organizations that receive grants must make sure that the tax money is not used to pay for “sectarian worship, instruction or proselytization.” It is a mystery how this legislative language will be enforced without a government officer standing in the sanctuary or poring over the church books, all the while making razor-thin theological judgments about what amounts to worship, instruction or proselytization. The “charitable choice” provision also requires religious organizations to be audited. If funds are segregated, then the audit would be limited to that funding. If the funds are not so segregated, then government will be able to review all of the church’s books.

The regulations set forth in the statute, however, are just the beginning. Other federal and state laws and regulations are triggered by the expenditure of federal tax money.⁹ Even in cases where the religious organization agrees with the purpose of those laws and regulations, putting itself in a position to prove the compliance, itself, may be inimical to the autonomy of religious organizations. Ensuring compliance with rules and regulations will also drain the already overtaxed resources of the religious organizations providing services. I agree with the recent observation that churches will spend “more time reading the Federal Register than the Bible.”¹⁰

Fourth, “charitable choice” dampens religion’s prophetic voice. Religion has historically stood outside of government’s control, serving as a critic of government. How can religion continue to raise a prophetic fist against government when it has the other hand open to receive a government handout? It cannot.

Dr. Martin Luther King, Jr., arguably the twentieth century’s best example of religion’s prophetic voice, warned:

The church must be reminded that it is not the master or the servant of the state, but rather the conscience of the state. It must be the guide and the critic of the state, and never its tool. If the church does not recapture its prophetic zeal, it will become an irrelevant social club without moral or spiritual authority.¹¹

But cannot religious organizations simply refuse government funding if it begins to harm their ministries? Yes, that is possible, but not likely. Government money may be irresistible to many churches on meager budgets. “Charitable choice” is a temptation of Biblical proportions. Once the money is taken, religious organizations

⁸“A Bill for Establishing Religious Freedom,” Virginia Assembly, presented June 1779.

⁹See generally, Rogers, Melissa, “The Wrong Way to Do Right: Charitable Choice and Churches,” in *Welfare Reform and Faith-Based Organizations*; Derek Davis and Barry Hankins, Editors; J.M. Dawson Institute of Church-State Studies, Baylor University, Waco: 1999; pp. 64–67.

¹⁰Tanner, Michael in “Corrupting Charity: Why Government Should Not Fund Faith-Based Charities”, CATO Institute, March 22, 2001.

¹¹King, Jr. Martin Luther, *Strength to Love*, 1963.

can develop a dependency, not unlike an addiction to a drug. As conservative Christian commentator Timothy Lamer pointed out:

Federal funding is a narcotic. Once addicted, recipients find it hard to live without.—Once Christian charities get used to collecting the subsidy, they will develop programs and goals premised on receiving government aid. The threat of losing such aid will be genuinely terrifying. They will surely fight such cuts and thus become what conservatives detest—recipients of federal grants lobbying for “more.” Are Christian conservatives prepared for the sight of Christian charities lobbying to keep their place at the federal trough?¹²

Fifth, “charitable choice” authorizes religious discrimination in employment. Under Title VII of the Civil Rights Act of 1964, churches and some other religious organizations are granted an exemption to discriminate on the basis of religion in their hiring and firing practices. This exemption, when it applies to privately-funded enterprises, appropriately protects the church’s autonomy and its ability to discharge its mission. For example, the Catholic Church must be free to exercise its religion by hiring only Catholics as priests. Courts have interpreted this exemption to apply not only to clergy, but also to all the religious organization’s employees, including support staff, and not only to religious affiliation, but also to religious beliefs and practices.

“Charitable choice” explicitly allows religious organizations to retain their Title VII exemption, even in a program substantially funded by government money. Allowing religious organizations to discriminate in the private sector is a welcomed accommodation of religion; but to subsidize religious discrimination with tax dollars is an unconscionable advancement of religion that simultaneously turns back the clock on civil rights in this country.

Sixth, “charitable choice” encourages unhealthy rivalry and competition among religious groups. We enjoy religious peace in this country despite our dizzying diversity for the most part because government has stayed out of religion.

I have heard your colleague Representative Chet Edwards (D-TX) say on several occasions that if he maliciously wanted to destroy religion in America, he could think of no better way than to put a pot of money out there and let all the churches fight over it. I agree. “Charitable choice” is a recipe for religious conflict.

“Charitable choice” also drags religion into the ugly governmental appropriations process—the underbelly of democracy. Government does not have the money to fund every religious group in this country. It will have to pick and choose. All too often, the majority faith in a particular area will prevail. But regardless of who wins, the process will not be pretty.

These six examples are just a few of the problems with “charitable choice.” Simply put, “charitable choice” is the wrong way to do right. Thankfully, there are right ways to do right.

DOING RIGHT THE RIGHT WAY

In dealing with church-state disputes, I always try to find a workable, practical solution even while acknowledging constitutional tensions. Common sense often suggests the best way to proceed. There is a better way. Government and religion may cooperate in the provision of social services in many ways that are good for government, religion, taxpayers and the people served.

To help people of faith evaluate the many permissible ways to cooperate with government and avoid ill-advised financial partnerships between government and pervasively religious organizations, the Baptist Joint Committee, along with The Interfaith Alliance Foundation, has published a document entitled *Keeping the Faith: The Promise of Cooperation, the Perils of Government Funding: A Guide for Houses of Worship*.¹³ The guide first advises houses of worship to define the vision of their enterprise and then to determine whether government funding or other forms of cooperation will promote or detract from that vision. Keeping the Faith offers the following basic advice.

There are many ways for government and religion to cooperate in the provision of social services while protecting the quality of tax-funded services and the autonomy and integrity of religious organizations.

First, houses of worship may continue to pay for social service ministries the old-fashioned way: with tithes, offerings and funds from other private sources. Government may and should encourage increased private giving. Tax deductions and other incentives to foster corporate, foundation and individual giving are absolutely prop-

¹²Lamer, Timothy in *The Weekly Standard*, January 15, 1996.

¹³Please see BJC Web site, www.bjcpc.org, for the full text of Keeping the Faith.

er. The idea of encouraging corporate matching funds for employees' gifts to religious organizations and other charities is a good one.

Increasing private funding for charities may also be achieved through expanding deductibility rules for charitable gifts for the 70 million Americans—two-thirds of all taxpayers—that do not currently itemize deductions. This is one of President Bush's faith-based proposals with which there is room for widespread consensus and a positive impact on the nonprofit sector. According to some estimates, the provision found in Title I of the Community Solutions Act (H.R. 7) would increase annual charitable giving by more than \$14.6 billion—a growth of 11% over 2000 giving levels—and encourage over 11 million non-itemizing taxpayers to become new givers.¹⁴

Government priorities may also encourage the private sector to fund the social service ministries of pervasively religious organizations. Last month, the Robert Wood Johnson Foundation announced plans to provide \$100 million in grants to 3,000 religious programs for the disabled and the elderly.¹⁵ Last week, participants in a conference titled "Faith-Based Demonstration for High Risk Youth" reported that private foundations seem to be more generous with their funding of religious organizations since the launch of President Bush's "faith-based initiatives."¹⁶

Second, houses of worship may spin off religiously affiliated organizations to accept tax funds and provide social service ministries—out of religious motivation, to be sure, but without integrating religion into the government-funded programs. This option was available even before "charitable choice" was passed in 1996, and President Bush's faith-based initiative may inspire more religious organizations to explore this option. This way of delivering social services is exemplified by the good work of Catholic Charities, Lutheran Social Services and United Jewish Communities. Religiously affiliated organizations can continue to minister to the needs of people out of religious motivation and even make available some privately-funded, separately-offered religious activities so long as they do not proselytize, require religious worship or discriminate on the basis of religion in hiring or service providing. In this vein, Sharon Daly, who leads Catholic Charities, has said that, "We help others because we are Catholic, not because we want them to be."¹⁷

This option also has another benefit. It sets up a firewall against government regulation of and entanglement with the pervasively religious organization. As long as this is done through a separate organization, the regulation should not seep through the corporate distinction and infect that church or house of worship. The institution-wide application of some regulation mandated by the Civil Rights Restoration Act makes this protection even more critical.

It has been suggested by some that the process of setting up a separate religiously affiliated organization is too cumbersome for some houses of worship, particularly those that are small in size and resources. This suggestion ignores with important realities. First, many churches have successfully established separate religiously affiliated organizations and have operated within safeguards for decades. Second, setting up a distinct 501(c)(3) affiliate should be no more onerous than complying with governmental regulation in the first place. If the real concern is easing regulatory burdens, then the government, specifically the Internal Revenue Service, could provide technical assistance to religious and other community providers wanting to utilize this option.

Third, government should lift onerous restrictions on houses of worship that unreasonably interfere with their ministries. Congress and state legislatures should make sure that religion, including the provision of social services by religious organizations, is properly accommodated. Congress has already taken the lead by passing the Religious Land Use and Institutionalized Persons Act,¹⁸ which protects religious organizations from burdensome zoning laws absent a compelling governmental interest. States should continue to pass state Religious Freedom Acts and localities should adopt zoning classifications that respect the autonomy of churches to run their social services with minimal restrictions.

Fourth, government and religious organizations—even pervasively religious ones—may carefully cooperate in creative, non-financial ways. Houses of worship can expand their influence in this area by partnering with other private organizations that have ties with the government. Government may also support the work of pervasively religious organizations without the use of taxpayer money. For example, gov-

¹⁴"Incentives for Nonitemizers to give more: An Analysis," PriceWaterhouseCoopers, January 2001.

¹⁵"\$100 Million Pledged for 'Faith-Based' Aid," *The Washington Post*, March 28, 2001.

¹⁶"Private Sector follows Bush, funds faith-based programs," *The Washington Times*, April 19, 2001.

¹⁷Rogers, "The Wrong Way to Do Right," p. 78.

¹⁸Public Law 106-274 [2000].

ernment may tout the good work that religious organizations do, make referrals when appropriate, share information, and invite religious providers to serve on government task forces.

These illustrations are just some of the ways in which we are able to forge a win-win situation. They demonstrate that social services can be delivered by religious organizations, the autonomy of pervasively religious organizations can be protected from governmental regulation, and the constitutional values that promote religious liberty, such as separation of church and state, can be preserved.

IMPLEMENTATION OF "CHARITABLE CHOICE"

Although "charitable choice" is now law in four different federal statutes, very few pervasively religious organizations have elected to apply for government funds for their social service ministries. There are several reasons for this gap between legislation and implementation.

First, according to reports, only a handful of states have aggressively implemented "charitable choice" since 1996.¹⁹ Most states have not instituted local regulations to assist pervasively religious organizations in applying for "charitable choice" grants.

Not surprisingly, Texas, the state that has most aggressively implemented "charitable choice," has also drawn the most litigation. Two of the five pending cases involving government funding of pervasively religious organizations are in Texas.²⁰

Second, the Clinton Administration did not promulgate rules and regulations to implement "charitable choice." In fact, acknowledging the constitutional problems, the Department of Justice interpreted "charitable choice" to exclude pervasively religious entities from qualifying for receipt of government funds. In his signing statement for the Children's Health Act of 2000, President Clinton noted:

The Department of Justice advises, however, that this provision would be unconstitutional to the extent that it were construed to permit governmental funding of organizations that do not or cannot separate their religious activities from their substance abuse treatment and prevention activities that are supported by SAMHSA aid. Accordingly, I construe the Act as forbidding the funding of such organizations and as permitting Federal, State, and local governments involved in disbursing SAMHSA funds to take into account the structure and operations of a religious organization in determining whether such an organization is constitutionally and statutorily eligible to receive funding.²¹

Third, and most instructively, churches and other pervasively religious organizations are hesitant to enter into contractual, financial relationships with the government. The state of Wisconsin received an "A" on Center for Public Justice's report card on compliance with "charitable choice," with the following explanation: "Gov. Thompson (R) made faith-based subcontracts a key performance indicator for W-2 (welfare) contractors in 1998." However, Thompson, now Secretary for Health and Human Services, recently noted that they only awarded government funds to one religious organization: "We opened it up and we didn't have as many applications as we thought there would be. We didn't pursue it any more. We made it available."²²

The situation in Wisconsin is not an anomaly. Churches and other pervasively religious organizations understand the dangers of government funding of their social service ministries. Thousands of houses of worship are providing social services across the country, but they are doing it in the right ways—using private funds for their pervasively religious ministries or spinning off separate religiously affiliated organizations to accept government funds.

CONCLUSION

The Baptist Joint Committee and other religious groups oppose "charitable choice" not because we want to discourage the delivery of faith-based social services. On the contrary, we oppose it precisely because of our religious conviction and our desire to maintain maximum religious freedom in this country.

We all want to do right—to help those in need. Let's do it in the right ways.

¹⁹"Charitable Choice Compliance: A National Report Card," Center for Public Justice, September 28, 2000. Meckler, Laura, "Charitable Choice Rarely Utilized," Associated Press, March 19, 2001.

²⁰*American Jewish Congress and Texas Civil Rights Project v. Bost* (W.D. Tex.) 00-A-CA-528-SS; *Lara v. Tarrant County* (Texas Supreme Court).

²¹Clinton, President William J., Statement of the President, October 17, 2000, signing of H.R. 4365, the "Children's Health Act of 2000."

²²Meckler, "Charitable Choice Rarely Utilized."

Mr. CHABOT. Members of the panel will now each have 5 minutes to ask questions of witnesses here this afternoon. I would like to start out with Mr. Clingman. I had the unfortunate duty to cut you off. I would like to give you my time at this point to ask if there is anything that you wanted to cover that you didn't have an opportunity to cover, or anything about your program that you would like to tell us here today.

Mr. CLINGMAN. I would just like to say it is a great opportunity for—to see sustained change with people who need the service. Unlike secular organizations, faith-based organizations develop immediate relationships with the clients and the people that they serve. Those relationships don't disappear when they leave. Those relationships continue throughout life in some cases. They are neighborhood residents who we see on a daily basis at the grocery store at the market and the bank, whatever. But those relationships that are important and the trust that developed causes to change. The greatest opportunity that our clients give us is an opportunity to speak into their lives. And with us, speaking into their lives and truth and, in our case, vision, purpose and hope, we have a much greater opportunity of turning the world around. Thank you.

Mr. CHABOT. Thank you very much, Mr. Clingman. Dr. Sherman, the charge is sometimes made that charitable choice is somehow government-funded job discrimination. But isn't the purpose of charitable choice funding not to create jobs or to fill the coffers of faith-based organizations, but to find social services for those in need?

Ms. SHERMAN. That is my understanding. My understanding is that through charitable choice, government is purchasing public services that are delivered by faith-based organizations, public services that they feel, perhaps, will be delivered by organizations that have greater grossularites credibility, that have the flexibility that Reverend Jones was speaking of, and that sort of thing.

So it is a purchase of a public benefit that is delivered through a faith-based organization.

Mr. CHABOT. Thank you very much. Reverend Jones, when you were talking about the service that you have in your city of Philadelphia, you had mentioned sometimes you hear criticism that these are the things which are going to be done, would be done by the faith-based organizations anyway, so why should we put government funds in there? But I thought you made some very good points in your testimony that these are things that really would not have happened other than that. Could you elaborate on that a little bit?

Reverend JONES. One of the benefits of being a house of worship, and I know there aren't many of us out here doing what we do, as a house of worship, is because we have really no restrictions. I don't have to pay over time, the people who work with us do it for the sense of conviction. Well, you guys make us pay overtime eventually. Do it for a sense of conviction. So they do it not for the money. They do it because they feel called to Christian charity and Christian love.

So there are solutions that even the staff come up with, even when we have hired staff that aren't Christian, they come to us with a different attitude because they are representing an organi-

zation that represents a different authority. And it has meant that we have had flexibility on creative solutions. It has meant we have had access into houses and into family members that aren't TANF recipients, but definitely are impacting TANF recipient negatively because we are the church and we knock on doors, we are let in and information is shared with us that if I was a government agency, they wouldn't open the door. We can take that information and help people to develop a workable plan for sufficiency.

Mr. CHABOT. Thank you very much, Reverend Jones. Reverend Walker, the Legislative Council for Americans United for the Separation of Church and State, Julie Segal has been quoted as saying, and I quote, with charitable choice, we are finding that out there, a lot of churches are complying with the Constitution and they are not proselytizing. Americans United for the Separation of Church and State has yet to find a single instance in which a charitable choice program has been implemented in an unconstitutional manner, and they haven't filed a single lawsuit.

If there were serious legal problems with existing charitable choice programs, wouldn't you expect that in our overly litigious society, would you see more legal activity in this area?

Reverend WALKER. There have been four or five cases filed already under the limited version of charitable choice. If it is expanded to the extent the president wants it to be, we can expect a lot more litigation challenging its constitutionality. I think that it just takes time for this to unfold, and it has only been 3 or 4 years, and we haven't had that many cases. But watch when it becomes intensified and expanded.

Beyond that, I think Ms. Segal was right; I think a lot of churches are listening to what we are saying. They are doing it the right way like Mr. Clingman, setting up a separate 501(c)(3) and ministering out of religious motivation, but without proselytizing or discriminating or requiring religious instruction as a condition to receiving the services. So I think a lot of them are wise enough to do it the right way.

Mr. CHABOT. My time has expired. And I will now recognize the gentleman from New York, Mr. Nadler for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman. Let me say this: I listened with interest to the testimony of Reverend Jones and Mr. Clingman, I commend you for the activities you are doing. It sounds, however, like everything that both testified was irrelevant to charitable choice because it could all be done without the so-called charitable choice as I see—that is under traditional programs. Government for decades has given grants under various provisions of law to churches, synagogues and to secular organizations to carry out various governmental purposes, including drug detoxification, provision of social services and so forth. And churches get those grants often and if they do it right, that is to say, without violating the law, various laws, wonderful.

It seems to me, reading this—and I want to ask Reverend Walker this—that the only difference that we are hearing, what charitable choice means, as far as I am able to figure out, is three things: one, that the church would be able not to bother complying with civil rights laws in terms of hiring and in terms of discrimination in employment under charitable choice. They wouldn't have to

do that as they currently do. Two, they could commingle funds with other church functions.

And three, and here sometimes we hear “yes” and sometimes we hear “no”; they seem to be, in the guidelines, direct opposites. On one page it says you cannot proselytize; the other side it says you can.

Those three aside, is there any difference or is that what we are talking about?

Reverend WALKER. That is the old-fashioned paradigm, if you will, of a separate 501(c)(3), which used to take the money and render the services and did that in that way of protecting the church and the house of worship itself.

The charitable choice involves the redirection of billions of dollars directly into the——.

Mr. NADLER. Let me stop you there.

Reverend Jones said her church could not have done this without charitable choice. How much is involved in a small church? You have been involved in this for a long time; if we do not change the law, what would it take for Reverend Jones’s church to set up a 501(c)(3) to do what they have been doing? How much is involved? Does it cost thousands of dollars? What does it take?

Reverend WALKER. I don’t think it is all that difficult. It is done all the time. I hate to presume on her abilities in that regard, but 501(c)(3)s are set up all the time by big churches, by small churches, by all kinds of organizations. If it is too much for a church to bite off, I think there is a lot of room for collaboration, for partnering with other churches, to develop a community-based organization under a separate 501(c)(3).

I might add that one of the things that government can do in this regard to accommodate religion is perhaps help folks set up a 501(c)(3), some technical guidance or other steps to help people know how to set up this separate corporate interest.

Mr. NADLER. Would you think it a violation of the first amendment if government were to provide aid to churches to set up 501(c)(3)s?

Reverend WALKER. I don’t think so. I think that is probably a proper accommodation of religion.

Mr. NADLER. So rather than allowing the church to commingle funds, which raises all kinds of first amendment problems, a better idea might simply be to give aid to the churches and say, if you want to apply for government grants, we will help you set up a 501(c)(3).

Reverend WALKER. I think there are many things the government can do to assist churches in setting up 501(c)(3)s.

But if I might answer another part of your question, despite what Dr. Sherman has said, this does result in religiously based discrimination. What we are doing is giving these organizations Federal dollars—a Baptist feeding program, for example—to take that money, go out and print up a sign that says no Catholics, no Jews, no Episcopalians need apply at this Baptist-run, but federally funded——.

Mr. NADLER. Need to apply to help run the program or get lunch?

Reverend WALKER. Absolutely.

Mr. NADLER. Which one? Need apply to work in the program ladling out the soup, or need apply to get lunch, or both?

Reverend WALKER. To work at the facility. And that is absolutely wrong. It makes sense to discriminate on the basis of religion under title VII when you have private funds involved, but when it is subsidized by taxpayers from all religious traditions, or no religion, it is fundamentally wrong and unconstitutional.

Mr. NADLER. I ask unanimous consent for an additional minute.

Mr. CHABOT. Without objection.

Mr. NADLER. Thank you.

I have one other question. Government, with or without charitable choices, has been giving grants to churches, synagogues, et cetera, to provide various social services under all kinds of existing programs without having any problems. And, of course, what the government has done is to say, put in an RFP and say we want to have a program of drug detoxification or Welfare-to-Work training or whatever it is, and local agencies should apply to administer the program; and a secular agency can apply, a church can apply and so forth. That is what it has been doing.

Do you think it is a violation of the first amendment if government were to make it clear, and is this implied in the charitable choice that we have, or that the President has proposed, number one; and number two, is there a first amendment problem with it if government were to make clear that we prefer churches to secular organizations?

Reverend WALKER. Absolutely. That is indisputable, and I don't think anybody on this panel would say otherwise.

Mr. NADLER. Is that in any of the proposals that the President has made or are that are in the existing law.

Reverend WALKER. The existing law and proposals purport to treat all bidders equally based on performance, but you and I know as a practical matter that the President is not interested in perpetuating the status quo. I think he clearly has said he wants more religious organizations to participate; and when it comes down to making the award, it is the majority religious applicant who is going to get the award, who will have the clout. It is the Baptist in Birmingham over the Buddhist in Birmingham who will get the money.

In Honolulu, maybe it is different. I don't know, but there is going to be a tendency to favor the majority religious sentiment in a majority religious community.

Mr. CHABOT. The gentleman's time has expired.

Ms. SHERMAN. Mr. Chairman, may we ask a procedural question? Are we permitted to respond only if the question is directed at us?

Mr. CHABOT. The gentleman from Tennessee is recognized for 5 minutes.

Mr. JENKINS. I don't have any questions.

Mr. CHABOT. Would you yield to me?

Mr. JENKINS. I will yield to the Chairman.

Mr. CHABOT. The gentleman has yielded to me.

I would like to ask Dr. Sherman if she would like to respond to any questions that she has heard so far.

Ms. SHERMAN. Only a couple points of clarification.

One, the remark was made that charitable choice permits religious organizations to ignore or neglect the civil rights laws, but in fact the 1964 Civil Rights Act specifically permitted religious organizations to select staff in accordance with their religious beliefs. So what we have in charitable choice is not an ignoring of the civil rights law of 1964, but an application——.

Mr. NADLER. Would the Chairman yield on this point, so I can ask her to clarify that?

Mr. CHABOT. It is not my time.

Mr. JENKINS. I will yield to the gentleman.

Mr. NADLER. Thank you.

Dr. Sherman, I assume you are aware that the exception in the Civil Rights Act of 1964 is for ministerial people, that is to say, for people who are teaching the religion, you can't discriminate—I am sorry. The church, the Catholic church, can insist that only Catholics may be priests. But it does not extend that, if the church owns a bowling alley that they can discriminate racially or sexually or religiously on who sets up the pins; and the charitable choice proposal would extend it well beyond the existing exemption in the civil rights law. Isn't that the case?

Ms. SHERMAN. It is the case that under charitable choice religious organizations providing publicly funded social services have the right to select staff who agree with the core values of that organization, just as other organizations that are secular have the right to select staff who are in accordance with their core beliefs.

Mr. NADLER. So the distinction is—and I think you will agree; let's just clarify what we are talking about—under current law, not including charitable choice, under the old laws, the church can certainly discriminate religiously or otherwise on who the minister or priest is and so forth, but if it gets a government grant to run a hot lunch program, it cannot discriminate religiously on who serves the soup. But under charitable choice proposals, it could discriminate and say that only people in our faith community may serve the soup, correct?

Ms. SHERMAN. In this sense, charitable choice is, in your words, an extension of the 1964 civil rights law; but I would contend with the argument that this extension represents an ignoring of the civil rights law which is what you said earlier.

Mr. CHABOT. Will the gentleman yield, Mr. Jenkins?

Mr. JENKINS. Yes.

Mr. CHABOT. With the additional time I have, I would like to ask Mr. Clingman and Reverend Jones a question.

Some critics have said that it is just too risky to trust someone who has religious values to follow charitable choice guidelines and to use government funds only to provide social services to people in need and to refrain from using government funds to preach.

What would you have to say about that concern that some people might have? Either Reverend Jones or Mr. Clingman or both if you would like to.

Reverend JONES. Before I respond, I would like to find out if anyone else has extra time. I would like to respond to the 501(c)(3) points since Cookman was used as an example.

Mr. CHABOT. I would be happy to yield my minute and 20 of Mr. Jenkins' time for whatever purpose you would like.

Reverend JONES. Okay, and then Brother Clingman can answer the other question.

Cookman made a decision not to apply for 501(c)(3) based on two issues. They were not all based on capacity. The majority issue was based on ideology. When we began to work on—we did begin the work of incorporating a 501(c)(3) because we thought that was the only way to get funding. We had applied for government grants before and were turned down. Even though we had a religious 501(c)(3) through the denomination, we were turned down because it was a religious 501(c)(3); so there were some agencies that would not fund us without a separate, secular 501(c)(3).

We had a few members who were willing to begin the process of starting a board, and also we started to reach out into the community to find other people to do it. So we started to do the things. We talked with a denominational lawyer. So we started to appropriate to form a 501(c)(3). But as we started it—and I ask that we remember that we are a small church, and people who are from small churches know that it is a unique environment. And what ended up happening is that the church began to mentally divest from what it thought was going to be a separate institution. And what that meant was that people who were coming forward to work in various areas, their attitude toward the program started to change because they started to see it not as a ministry of the church, but as a secular program.

And we had trainers come in to train on that, and they forced that into the minds of the people, and so as the people divested, the leadership of the church made a conscious decision to hold off on the 501(c)(3) to maintain the integrity of the church; and the church people were very pleased with that because they wanted ownership of the ministry.

And even though we do not proselytize, the reality is what we do, especially in our community, where the sense is that we do something that matters as an organization ourselves. And when they heard it was going as a separate, secular entity, they felt it was no longer going to be ours, even though legally, maybe. But in reality, in our hearts and their heads, it wasn't.

It doesn't mean we won't get one at a later date, but for us to begin, that was necessary.

Mr. CHABOT. Thank you.

The gentleman from Tennessee's time has fully expired, and I will recognize the gentleman from Detroit for 5 minutes.

Mr. CONYERS. Thank you.

We have all good people here, but I am just wondering Reverend Jones, have you examined or do you have an opinion about the constitutional question that is being kicked around here? What is it?

Reverend JONES. The separation of church and state, the establishment of religion.

Mr. CONYERS. And I guess the first amendment, as well.

Are there constitutional problems that you might want to examine or that you have examined?

Reverend JONES. The issues that we have looked at were issues of freedom, that we felt as though the church has been unfairly discriminated against in funding and in competition.

We also do not see what we do in ministry as in any way impacting the establishment of religion. We examined the issue of hiring as an organization and made decisions around that that match our philosophy around what the Constitution is saying about anti-discrimination, so we do not discriminate in hiring.

I don't know if I understand completely what your question is.

Mr. CONYERS. It is whether you have examined the constitutional question and arrived at a conclusion about it.

Reverend JONES. Related to the establishment of——.

Mr. CONYERS. Just yes or no.

Reverend JONES. Yes.

Mr. CONYERS. You have.

Mr. CLINGMAN, what about you? Have you looked at the constitutional question?

Mr. CLINGMAN. We established a separate 501(c)(3), not because of the constitutional question, but because that was the best way for us to provide the——.

Mr. CONYERS. But have you examined it yourself?

Mr. CLINGMAN. No, I haven't.

Mr. CONYERS. Okay, no problem.

Let me ask you, Reverend Jones, what is the size of the charitable choice money that you get at the present time?

Reverend JONES. We get less than \$100,000 per year, and it varies. The first grant was paid for performance. We have gotten other grants for \$50 to \$70,000.

Mr. CONYERS. And it is your belief that something additional will be able to happen to you or there will be some additional benefits if we expand the charitable choice provision.

Reverend JONES. I am not up to date on the expansion.

Mr. CONYERS. Sure.

Mr. CLINGMAN, what is the size of your relationship under the charitable choice?

Mr. CLINGMAN. Over \$3 million.

Mr. CONYERS. Over 3 million annually?

Mr. CLINGMAN. Over the period since the time we have gotten the contracts.

Mr. CONYERS. Since you have started?

Mr. CLINGMAN. Right over the last 2½ to 3 years.

Mr. CONYERS. And if we left it like it was, would anything different be happening for you? I mean, in other words, you are already getting this much money, so what is it that we are trying to do that would make life better for you?

Mr. CLINGMAN. I guess I would say that we could have direct access to the funds without having to go through county and State, that we could come to deal directly with the Federal Government on the RFP as opposed to getting it from the Department of Human Services.

Mr. CONYERS. Well, in other words, you are not satisfied with the situation as it exists at the present time?

Mr. CLINGMAN. "Dissatisfaction" is an unfair word in regards to how we receive our funding.

Mr. CONYERS. Well, you like the way it is being done now?

Mr. CLINGMAN. I like the way it is being done.

Mr. CONYERS. Then why should we change it?

Mr. CLINGMAN. I am not suggesting that you change it, except expand it to allow for more participation.

Mr. CONYERS. What more participation could you possibly want?

Mr. CLINGMAN. It may not necessarily benefit me, but it could benefit others.

Mr. CONYERS. Have you looked at who the others that would be benefited, if it doesn't affect you?

Mr. CLINGMAN. No, I haven't.

Mr. CONYERS. All right. Then, in other words, what I am just suggesting to everybody here is that if there isn't any serious problem with what is going on, why are we here to change it merely because the President or somebody else told him that this would be a great idea?

Because we find that the more you expand these things with the government, the more likely you are to have Federal audits and government people looking over your shoulder. And also some of the friends of the other people that helped you do this may come to you for political favors later on.

I hate to raise this, but it has happened in churches, hasn't it?

Mr. CLINGMAN. It won't happen with us.

Mr. CONYERS. I said it has happened with churches.

Mr. CLINGMAN. It has happened in churches, but it will not happen with us. It is a matter of integrity and a matter of getting the service for the product that you ordered.

Mr. CONYERS. I have no reason to doubt you.

Mr. CHABOT. The gentleman's time has expired.

I will yield myself just 30 seconds here, just to reiterate that the purpose of the hearing was to look at the existing charitable choice programs as they are functioning at this time, with a couple of representative examples. The President has proposed an expansion of that program, and before one expands something, it would be logical to look at how it is working right now; and that is the purpose of this hearing.

We appreciate the responses of the witnesses.

I will yield to the gentleman from Indiana, Mr. Hostettler, for 5 minutes.

Mr. HOSTETTLER. Thank you, Mr. Chairman. And I appreciate this hearing. This is a very timely hearing, and I, like my colleagues on the other side, would like to see the scope expanded to talk about this whole idea of charitable choice, the failure of the secular community of government to win the war on poverty that I think formally began in 1965 and was supposed to end sometime around 1975.

The testimony I hear today is that poverty is doing very well, even given the fact that the Federal Government has spent trillions of dollars trying to solve the problem without an approach such as this.

I guess I would like to speak to a comment made by Reverend Walker. I understand he is also an adjunct professor at the Georgetown School of Law. And the discussion was with Mr. Clingman and Reverend Jones about their discussion of the constitutionality; and I am curious, Reverend Walker, if we can exclude the opinions of the United States Supreme Court.

Are you familiar with the legislative history of the idea of separation of church and state, amendments proposed, amendments adopted in the past with regard to what in fact the Constitution means in the establishment clause, what the 14th amendment meant when it was established; the Blaine amendment, for example, that was defeated in 1876, what it proposed to do, the reason why it was proposed and that sort of thing. Because when you mention the constitutionality, you keep bringing up the Supreme Court. A lot of my colleagues do as well.

We are the United States House of Representatives. One of the fundamental discussions that we have in government classes is this idea of the separation of powers. The legislative body, the judiciary.

I am intrigued. What is your understanding of the legislative history of this idea of what the Federal Government, what government can do to establish religion. Because we have heard from the other witnesses and their idea, if we expand this idea of charitable choice, they have been questioned as to if it is working the way it is now. And they have been led to state, and I think maybe against their better judgment, that we do not need to expand it.

Let me just ask them. If we expand—Reverend Jones, Mr. Clingman—if we expand charitable choice and we take away from some of the fetters that we have intended to impose with regard to free exercise of religion, if we expand charitable choice, do you think it will help more people?

Reverend JONES. I think it depends on what we are expanding. If we are offering charitable choice provisions to greater pots of Federal funds so that we can compete in areas beyond welfare reform, beyond drug and alcohol addiction and in other areas, I would say, yes, there is definitely a need for that.

As far as the provision itself and how it is executed in the local church or in faith-based organizations, I don't know that I see that that needs expanding.

Mr. HOSTETTLER. My question is—you don't need to second-guess me—I am just asking, if you were given the ability to use taxpayer monies that have in the past failed in the war on poverty, and we simply ask you to try a better way, if you have it, do you think that will help people? Do you think your way has proven to be effective, and if we allow more accessibility to those funds, that more people can be helped not only by your organizations, but organizations in the past who may have been very reticent to enter because of these entanglements that government has put in the past.

If we remove some of these entanglements, do you think more people can be helped?

You don't have to second-guess what I am asking. I just mean the question that I am asking you.

Reverend JONES. Probably.

Mr. HOSTETTLER. Thank you. You should be up here.

Mr. CLINGMAN. I would say, yes.

Mr. HOSTETTLER. Very good.

Mr. CLINGMAN. The expansion of services, a lot of times, is depending on dollars.

Mr. HOSTETTLER. We are simply asking if you can do something better than the Federal Government can. It closes its doors at 5 o'clock on Friday, and as you mentioned earlier, Reverend Jones,

you don't close your doors. Having administered a food pantry at our local church, we didn't close our doors at 5 o'clock, either, on Friday, and we helped a lot of people.

Reverend JONES. I am saying, if you are talking about expanding the opportunity for funds, I would say definitely yes.

Mr. HOSTETTLER. Yes, that is what I am saying.

Reverend JONES. Okay.

Mr. HOSTETTLER. That is what I am saying.

Mr. CLINGMAN. One thing we bring to the table is, at the grass-root level, we really do not close. If someone gets in trouble at midnight we allow them to call, based on the crisis they have. Other programs close at 5 o'clock.

The government closes at 5 o'clock. Faith-based organizations, i.e., churches, synagogues, mosques, they don't close. They are available to serve the clients 24/7. And I guess that is really one of the larger differences, that it allows us to serve more people on a longer term.

And, in addition to that, we don't cut them off when they succeed. We follow our clients for a year or whatever it takes for them for self-sufficiency. We have a number of clients that come back after 2 years, that have been laid off or fired, that come back for additional services that are not paid for, and we will continue and re-enroll them and go through the same process again to get them back to the point of success that they left 2 years earlier.

Mr. CHABOT. The gentleman from Indiana's time has expired.

The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Reverend WALKER. Mr. Chairman, may I respond? He asked a question and then we got off point, and I never had a chance to respond.

Mr. CHABOT. With unanimous consent, we will give the gentleman another minute.

Mr. HOSTETTLER. Well, I am just reading a law review article, the Detroit Law Journal in December 1963, by a predecessor of yours, Mr. F. William O'Brien. He is talking about the Blaine amendment, this very interesting discussion about the Blaine amendment and why it was necessary and the implications of the 14th amendment.

I was just going to ask you, if we can extract the idea that the Supreme Court is going to tell the United States House of Representatives how to legislate, what is your understanding of the historical nature of the establishment clause? That is a long-term question, but I just find it interesting that in the discussion of the Blaine amendment, which spoke specifically about the establishment of religion on a State basis, there was no discussion whatsoever of the 14th amendment's ability, capability to do what was decided, that was proposed in the Blaine amendment.

So we hear a lot of discussion in this Chamber, in this—about the Supreme Court, but I am just asking, since we are a legislative body, what your take on that is.

Mr. CHABOT. The gentleman's time has expired, but we will give the gentleman an additional 1 minute.

Mr. WATT. Mr. Chairman, reserving the right to object unless you are yielding him the time for the witness to respond. I am not sure I want to yield him another minute to ask another question.

Mr. CHABOT. I did not do that the first time. I have done it the second time, so I yield the gentleman a minute to respond to the question.

Reverend WALKER. The Supreme Court should not tell this body how to legislate, but it properly does decide the constitutionality of legislation that this body adopts.

And I was originally going to say that my assertion that for government to give money to pervasively religious organizations is unconstitutional, which is the prevailing attitude of the Supreme Court, is perfectly consistent with my understanding of original intent.

That was what the conflict was all about. It was about Patrick Henry's attempt in Virginia to tax the citizens to pay for the teaching of religion. And Mr. Madison came forward with his famous "Memorial and demonstration" and knocked it down. It was defeated politically, and that Virginia model of disestablishment and forbidding the use of taxpayer money to advance religion is what became embodied, in my view, in the two religion clauses in the first amendment.

Mr. CHABOT. Okay. The gentleman's time has expired.

Now the gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Clingman, first of all, you understand that charitable choice doesn't bring any new money to the table; it just spreads out the same amount of money. As I understand it, you have a 501(c)(3)?

Mr. CLINGMAN. Yes.

Mr. SCOTT. In your testimony, you say you do not thrust your life-style upon people who are called to serve: "therefore, we do not have Bible study as part of the curriculum. Prayer is available for those who request it before or after classes. Our staff is diverse culturally racially, in gender, and in faith."

Do I understand that to mean you do not advance your religion during the program?

Mr. CLINGMAN. Absolutely.

Mr. SCOTT. Do I understand you to say that you feel comfortable in complying with civil rights laws?

Mr. CLINGMAN. Absolutely.

Mr. SCOTT. Mrs. Jones, do I understand you to say the government money that you get is deposited directly into your church checking account?

Reverend JONES. We have a separate account for transitional journey ministry.

Mr. SCOTT. Do you proselytize during your program?

Reverend JONES. No.

Mr. SCOTT. If your parishioners are qualified for jobs as drug counselors and the Federal Government is sponsoring a drug program somewhere in the area, should they have an absolute right to apply for a Federal job and not be discriminated against.

Reverend JONES. Yes.

Mr. SCOTT. Okay. Reverend Walker, you answered the question on technical assistance, if the Federal Government gave technical assistance to anybody who walked through the door on how to set up a 501(c)(3) would there be a constitutional problem if somebody walked through the door who represented a church.

Reverend WALKER. Absolutely not.

Mr. SCOTT. Okay. Do you know whether or not a church is subject to the Fair Labor Standards Act, do you know?

Reverend WALKER. I don't know for sure.

Mr. SCOTT. Do you know what the ministerial exception on a title VII means?

Reverend WALKER. I do.

Mr. SCOTT. What does it mean?

Reverend WALKER. The ministerial exception means that with respect to ministerial personnel, the church is pretty much able to discriminate on any basis, not just on the basis of religion, but can discriminate and hire and call whom they will to fill the ministerial position. So it is a much broader exception than the title VII exception for discrimination on the basis of religion.

Mr. SCOTT. That is part of the title VII interpretation; is that right?

Reverend WALKER. It is part of title VII interpretation.

I think other courts have interpreted it strictly as a constitutional matter, that it would be unconstitutional for the civil courts to get involved in second-guessing the hiring and firing of ministerial personnel.

Mr. SCOTT. If the church got a government contract directly as the church and had its title VII exception, would not the ministerial exception apply to drug counselors preaching the faith?

Reverend WALKER. I think some courts would so hold.

Mr. SCOTT. And that way you can have race discrimination based on the language in the charitable choice bill, if the person were designated as a ministerial employee.

Reverend WALKER. That is not entirely certain, in my mind, but that is certainly a possibility.

Mr. SCOTT. Ms. Sherman, you indicated something about a level playing field. By "level playing field," do you mean that if a religious group got a contract, unlike anybody else, they wouldn't have to comply with the same civil rights laws, they wouldn't have to provide the same separation of church and state that would prohibit the advancement of religion during the program? Is that what you mean by "level playing field"?

Ms. SHERMAN. No, sir. By "level playing field," I mean that charitable choice creates an environment in which faith-based organizations that provide public services can compete against secular organizations that provide similar services rather than not even being invited to the playing field.

Mr. SCOTT. Wait a minute. You said they are not invited. Why can't a religious organization like Mr. Clingman's apply for a contract today, so long as they will comply with all the laws just like anybody else? Is there any prohibition from Mr. Clingman's organization applying for a Federal grant without charitable choice?

Ms. SHERMAN. Mr. Clingman's organization may not wish to participate in a program which requires it, before it even gets started, to completely change its nature.

Mr. SCOTT. Well, he is complying with the laws on the level playing field like everyone else. In the majority memo it indicates, quotes you as saying, "Thus far, the data suggest that the worst fears are not being realized. Wacky cults have not secured any government social welfare dollars under charitable choice."

Is that part of your testimony?

Ms. SHERMAN. It is not part of my written testimony, but that is from a previous document, I believe.

Mr. SCOTT. Who defines wacky cult?

Ms. SHERMAN. The issue that I was addressing there is, as some individuals have suggested, organizations that are viewed by the man on the street as being a little bit different might compete for funding; and my response to that simply was that charitable choice is not a pot of money set aside for religious groups.

Charitable choice, in order to receive government contracting, you have to put forth a good proposal. You have to be able to provide an effective public service. And so the issue—some people suggest hypothetically that we are going to get all kind of strange religious organizations suddenly receiving taxpayer dollars. And the issue is, no one is guaranteed because they are a religious organization under charitable choice that they will somehow be able to win the competition. There is a competition, so the best provider of services can prove that through their proposal.

Mr. CHABOT. By unanimous consent, the gentleman is recognized for an additional 1 minute.

Mr. SCOTT. Like I said, are Hari-Krishnas a wacky cult?

Ms. SHERMAN. Not necessarily, in my judgment, sir.

But what I am trying to say is that some people were suggesting that religious organizations would be able to secure funding because they misunderstood the nature of charitable choice.

Mr. SCOTT. That is exactly the point, because government officials will be deciding which is a good religion and which is a, quote, "wacky religion."

Ms. SHERMAN. No, government officials will not be deciding what is a good religion or a bad religion. Government officials will be deciding which is the organization that can provide the services most effectively.

Mr. SCOTT. If a wacky cult could provide the best services, would they get the money?

Ms. SHERMAN. It is entirely possible, yes, sir.

Mr. SCOTT. Could you explain, when you talked about the core beliefs of an organization and being the same as a church discriminating, based on religion, what you meant by that?

Ms. SHERMAN. Could you repeat the question, sir.

Mr. SCOTT. You mention something about an organization has the right to hire people that believe in the core beliefs of the organization in the normal—what I have heard, Planned Parenthood hiring only prochoice people, the National Rifle Association hiring only anti-gun-control people.

Could you explain how that would be applied in a government contract situation with a church being the sponsor of a program?

Ms. SHERMAN. Yes. That a Jewish organization might suggest that they only wish to hire people who shared their Jewish faith.

Mr. CHABOT. The gentleman's time has expired.

Did you want to complete your statement? I didn't want to cut you off.

Mr. SCOTT. If I could just complete——.

Mr. HOSTETTLER. Point of order, Mr. Chairman. In order to spell Mr. Watt on this discussion of extra time for more questions, could the gentleman wrap it up?

Mr. SCOTT. If I could have 10 more seconds.

Mr. HOSTETTLER. No. I was requested a while ago to stop speaking and let a response take place for extra time.

I know Mr. Watt has leaned forward.

Mr. SCOTT. I ask unanimous consent for 10 additional seconds.

Mr. CHABOT. We will give the gentleman 30 seconds, and Dr. Sherman can respond with half of that.

Mr. SCOTT. Do you understand the concept of "protected class," that there are some groups that we will not discriminate against because of race, color, national origin and religion; and that is different from discriminating against people based on other criteria?

Ms. SHERMAN. I am not a legal expert, sir.

My understanding is that charitable choice allows religiously based organizations to hire those people who share those religious tenets so that the character of their services will be in accord with the core values of the organization.

Mr. CHABOT. The gentleman's time has expired.

The gentlelady from Pennsylvania, Ms. Hart, is recognized for 5 minutes.

Ms. HART. Thank you, Mr. Chairman. I would like to thank the panelists for coming.

I find this a very intellectually stimulating conversation, and I appreciate the testimony of all of you. Although I missed Dr. Sherman's, I did read most of it while we were going through this and I did read some of the things that we were presented with before in some of your research.

I think the first thing I said I wanted to address, and I do want to give, I guess, an opportunity for sort of both sides of the issue to respond, is that I don't see this as necessarily an opportunity—actually, not necessarily; I see this not as an opportunity to create a whole new bureaucracy that just happens to be headed by churches. I see this as an opportunity to take advantage of these wonderful organizations that have been helping people in the community, mostly on a very small scale, and not change their character.

The whole point of this initiative is to leave them alone in their character and allow them to provide services which they have been very successful in providing. I believe that that is the reason why there is no requirement that they comply with certain hiring practices, because the goal here is not to have them go out and hire a bunch of new people. The goal here is to have them use those folks who have been providing those services successfully without having the government come in and say, we have to fire him and replace him with someone else because you were not complying with civil rights laws or anything else.

I would like to comment, and I guess I will ask Reverend Walker first to explain how you could expect these organizations to comply with the current law and not to change their character.

Reverend WALKER. What I would like for them to do, and I suggest this to churches that call in for advice, is to think specifically and intentionally about which of the programs you are interested in delivering really depend on faith as an integral part of the delivery of those services for its success. There are some that really depend on religion being thoroughly involved in the program; drug and alcohol rehabilitation, for example, comes to mind, where religion really does make a difference.

When you make that decision, then do it and do it right, proselytize, discriminate on the basis of religion in hiring, do your strategies that may require Bible study, et cetera, but do it with private funds and do it out of the church and do it in a way that is consistent with your commitment.

Ms. HART. And that is an option available to them?

Reverend WALKER. Absolutely. Absolutely.

Then think about the kind of programs that maybe you do not need as much religion built into it—feeding program, reading program; it would be nice, but it is not absolutely essential to the program—and spin those off into a separate 501(c)(3) and apply for Federal money or State money or any kind of money that you feel comfortable with to pay for those services.

I think we can again have a win-win situation. We can deliver faith-based, religiously involved services through the church without government regulation with private funds, and then spin off the others into an affiliate to participate in government funding as you see fit.

Ms. HART. Then you do expect them to change their character if they are going to hire a lawyer, which they can't afford, set up a 501(c)(3), and possibly—I don't know if you mean they are going to have to hire separate people to operate it or not, but that really does change the character.

I am very familiar with a number of districts—I think the largest town in my district probably has 20,000 people in it. In most of the towns and communities that I represent, that have these kinds of organizations, they are faith-based. They are a few people from the church who take care of kids after school, a few people from the church who do different things at different times, as needed in the community.

You are talking about all this government rigmarole that really isn't practical.

Reverend WALKER. I think it is practical. I am not talking about the government rigmarole. It is those who want to expand charitable choice who have set up six new offices in Washington and who are trying to expand this concept far beyond what was originally intended.

But no—yes, if you—if you are going to take government money, out of respect for the Constitution and out of a sense of accountability for funds, you have got to change some of your practices.

I was simply saying, let's think intentionally about where that matters in your serving the community. If it really doesn't matter,

why not do it? If it does matter, do not take your money and do it in a way that your faith—

Ms. HART. I disagree with you. From my initial statement, what I had hoped this would achieve is not what you are asking us to do.

I would hope that—Reverend Jones or Mr. Clingman, if you remember what I said when I first opened the question, just tell me what you think about my suggestion for what the motivation for this is, and if you would have to change the character of some of the things you do or some of the smaller organizations that you know of.

Mr. CHABOT. The gentlelady's time has expired. In the interest and in the leniency that the Chair has shown, we will give you an additional minute and let them answer that.

Reverend JONES. We did make a conscious decision before charitable choice, based on maintaining the integrity of our organization not to pursue a 501(c)(3), and we feel as though that is an important right. We are providing a good service and we do not feel as though in the United States we should be forced to do something in order to have the resources to do it effectively and do it well.

Mr. CHABOT. Mr. Clingman.

Mr. CLINGMAN. Our integrity did not diminish at all. We are Christians. We are a Christian organization; we live and breathe that life. It is not what you say, but who you are that causes people to change. You can tell them all you want, but if you do not demonstrate it in your life-style, change does not occur. So we established a 501(c)(3) because it was convenient for what we wanted to do, but that does not change what we believe.

Ms. HART. Since I have a couple seconds.

Mr. CHABOT. Yes, you have 2.

Ms. HART. I have 2 seconds.

I just want to make a comment, and that is, if there are both kinds of services that can exist—that is, the ones who decide they want to have a 501(c)(3) and the ones who may be smaller or more flexible and want to be that way without providing that 501(c)(3), or whatever—and they can commit to follow the same rulings that everyone else would follow, I see nothing wrong with it.

Thank you, Mr. Chairman.

Mr. CHABOT. Thank you.

And the gentleman from North Carolina, Mr. Watt, is recognized for 5 minutes or 6 minutes, depending on how things go.

Mr. WATT. Thank you, Mr. Chairman. I will try to do it in 5. I just want to go with one aspect of this that is troubling to me, and be clear about it.

Reverend Jones, you testified that your church is involved in job coaching and you do a reading program?

Reverend JONES. Yes.

Mr. WATT. And I am assuming that you have employees that you pay to teach the reading program, and you also have volunteers that are members of the church who come and volunteer their time?

Reverend JONES. Yes.

Mr. WATT. Okay. In the selection of your employees, you also testified that you are affiliated—your church is affiliated with the

United Methodist Church. In the selection of your employees, do you limit hiring to members of the United Methodist Church?

Reverend JONES. No, we do not.

Mr. WATT. If there were an employee of your church, having built up substantial experience at running a reading program, teaching kids to read, and that employee went to a reading program that was under the jurisdiction of the Jewish church—synagogue, would you think it would be fair if that employee were more qualified to teach reading for the Jewish synagogue to say, no, we have a policy even though we are teaching reading, we have a policy of not hiring people in our reading program who are not Jewish.

Reverend JONES. Yes.

Mr. WATT. Yes?

Reverend JONES. Yes, I think that that is fair.

Mr. WATT. You think that would be fair?

Reverend JONES. If it is a Jewish organization and they feel about—especially if you are talking about teaching reading, yes; if you are talking about custodial support, I would say no.

Mr. WATT. I am talking about reading.

Reverend JONES. Reading, yes.

Mr. WATT. I am trying to simplify this. It is not reading religious material. It is learning how to read.

Reverend JONES. I would say that persons who are involved in instruction should share the ideology of the association that they are working for.

Mr. WATT. So even if the person who left your program, who had gotten 5 years of experience in learning how to teach kids to read, were more experienced than the person he was competing against, he or she was competing against, a Jewish person who had no experience in teaching kids to read, you would think that it would be appropriate to allow the Jewish synagogue to limit its hiring to somebody who was even less qualified to teach reading?

Reverend JONES. Yes, mainly because I believe it is related to maintaining the integrity and the ideological integrity of the organization.

Mr. WATT. That is fine. I just wanted your opinion.

Do you agree with that, Mr. Clingman?

Mr. CLINGMAN. Yes, I do.

Mr. WATT. But I take it neither one of you would yourself discriminate on that basis.

Reverend JONES. We haven't.

Mr. CLINGMAN. We have not either.

Mr. WATT. You don't limit your employees to United Methodist. What denomination are you?

Mr. CLINGMAN. We are nondenominational.

Reverend JONES. Our community is mostly Christian and Muslim, and we have offered positions to Muslims before.

Mr. WATT. Let me move on. That finishes that line of questions. I respect your opinion on that; I don't agree with that, but I respect it.

At the end of a 40-hour work week, if one of your employees—not one of your volunteers—decided, I am tired, I want to go home, and you had somebody there and they were not willing to continue

to provide the service, would you think it would be appropriate to terminate that employee?

Reverend JONES. No, definitely not. I would lose most of my staff.

Mr. WATT. All right. So this thing about not having to pay overtime.

Reverend JONES. Well, yes.

Mr. WATT. That was kind of a flip comment you made?

Reverend JONES. It was actually based on an experience that we had with a State employee—not working for us, but working for another agency—that was doing work to help us out; and they actually wanted to stay longer and do something, but their supervisor declined it. If we did, they would have had to pay him overtime if he did it in the capacity we needed him to do it.

What I am saying is, I do not require my people to stay overtime, but I chose it and it is okay.

Mr. CHABOT. By unanimous consent, the gentleman is recognized for an additional minute if you want to use it.

Mr. WATT. Do you have an additional response or the same response, Mr. Clingman, to the question I gave her?

Mr. CLINGMAN. My staff will serve until the job is done. We don't have an overtime issue. If there needs to be service rendered after the normal business hours, I have not had any problem rendering that service without any requirement of paying overtime or compensatory time.

Mr. WATT. But do you think a nonchurch social services agency—do you think that puts you on a level playing field with a nonchurch social service agency?

Mr. CLINGMAN. I would think in a nonchurch agency they probably would have—could have some union issues they would have to deal with.

Mr. WATT. They have some fair employment practices issues if they are expecting their employees to work.

Mr. CLINGMAN. To work overtime?

Mr. WATT. Right. Not union issues. It has nothing to do with that.

Mr. CLINGMAN. Fair employment issues, that they expect their people to work in excess of 40 hours a week. However, we pride ourselves at the grass-roots level as being available when the services are needed.

Mr. CHABOT. The gentleman's time has expired.

Are there any additional requests for time?

Mr. NADLER. Mr. Chairman.

Mr. CHABOT. Yes. The Ranking Member is recognized.

Mr. NADLER. Mr. Chairman, I ask unanimous consent that all Members be permitted to submit additional materials for the record.

Mr. CHABOT. Without objection, it is so ordered.

Mr. SCOTT. Mr. Chairman.

Mr. CHABOT. Mr. Scott is recognized.

Mr. SCOTT. I just wanted to ask a follow-up question because we have two different answers to the question of discrimination from Mr. Clingman and Reverend Jones. I was wondering if I could follow up briefly.

When I asked them, neither one discriminated based on religion, but there seemed to be some willingness to let someone else discriminate. My question, I guess to Reverend Jones, is, if you had the contract for the reading program and you had all of the qualified reading specialists, and a church down the street won the contract and you lost the contract and they were hiring people, do you expect your former employees, since you have lost the contract, to have all the benefits of the civil rights laws when they apply for a Federal job?

Reverend JONES. I don't look at the jobs that we provide at churches as being Federal jobs. Our employees work for the church.

Mr. SCOTT. If you have a contract and your contract involves hiring 10 employees, and you have hired 10 employees on that contract and they are the best experienced reading specialists in the area, and you lose the contract to another agency, would your employees expect to be able to apply for the jobs and not be discriminated against?

Reverend JONES. Not at other houses of worship, they wouldn't expect it. They wouldn't expect to go into a mosque?

Mr. SCOTT. For a Federal job?

Reverend JONES. It is not a Federal job if they are working for the church.

Mr. SCOTT. But if they are paid for with Federal money and you have got in the area 10 jobs paid for by the Federal Government and that is the contract, would you expect your parishioners to have an absolute right to apply for the jobs and not be discriminated against?

When we passed the antidiscrimination laws in 1964, it wasn't unanimous. A lot of people did not like the idea that you had to hire blacks if they are more qualified or had to hire people of different religions if they are more qualified.

Reverend JONES. Well, generally speaking, as far as I understand it—and again I am not a legal expert—church employees, regardless of funding source, work for the church. We are paid by the State to provide a service, and we provide that service. But the employees do not report to the State, they report to the church; and my understanding of the issue of maintaining the integrity of a religious organization is that the ideology of the religion is very much a part of that.

So most employees who are not sharing that faith, generally speaking, don't expect to go into a church and work in a teaching capacity or anything else; and I would not expect it either. We chose, just based on the makeup of our community, not to discriminate in hiring, but I would not want to force that on the Apostolic church across the street.

Mr. CHABOT. The gentleman's time has expired.

I want to thank the witnesses for their testimony here this afternoon. I thought it was very, very excellent. And there were some probing questions asked by Members of both sides, and I thought the panel did very well.

And again, the purpose of this hearing: There is a discussion about the expansion of charitable choice in this country. The programs already exist, but we want to see what is working out there right now; and particularly Mr. Clingman and Reverend Jones

showed us what is happening in their communities and how it is working well.

We appreciate your coming here. If there is no further business to come before the Committee, we are adjourned.

[Whereupon, at 3:54 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE STEVE CHABOT, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF OHIO

While the First Amendment to the Constitution provides that the government shall not “establish” a particular religion, or religion over non-religion, the First Amendment also provides that the government shall not prohibit the “free exercise” of religion. Consequently, government must ensure that members of organizations seeking to take part in government programs designed to meet basic and universal human needs are not discriminated against because of their religious views.

This simple principle of “charitable choice” allows for the public funding of faith-based organizations with demonstrated abilities to meet the needs of their neighbors in trouble while preserving the religious character of those organizations by allowing them to choose their staff, board members, and methods. These principles also protect the rights of conscience of program beneficiaries by ensuring that alternative providers, providers that are unobjectionable to them on religious grounds, are always available. Charitable choice simply means equal access.

Charitable choice is not a new idea. Existing charitable choice programs have benefitted thousands of persons in need without raising constitutional concerns in their implementation. Every member of this subcommittee, except for one newly elected member, has previously voted for federal legislation containing charitable choice principles. Of my Democratic colleagues on the subcommittee, most have voted for at least two such pieces of legislation—the Community Service Block Grants Act and the Substance Abuse and Mental Health Services Act. The latter was supported by every Member of the Judiciary Committee and signed into law by President Clinton. That law’s purpose, as stated in the legislation itself, is “to prohibit discrimination against nongovernmental organizations and certain individuals on the basis of religion in the distribution of government funds to provide substance abuse services [and to] allow the organizations to accept the funds . . . without impairing the religious character of the organizations or the religious freedom of the individuals.”

My own state of Ohio has benefitted greatly from charitable choice programs. Along with the states of Texas, Wisconsin, and Indiana, Ohio received an “A” grade for its implementation of charitable choice programs from the Center for Public Justice, a research organization that tracks charitable choice initiatives.

It is a tragedy that those moved to help others by the strength of faith—perhaps the most powerful spur to human improvement and the inspiration for untold numbers of selfless acts—face added barriers to federal social service funds, based on misguided understandings of the Constitution’s religion clauses. Often it is those whose earthly compassion has the deep roots of faith who stand strongest against the winds of despair. Different rules should not apply to them when they seek to cooperate with the federal government in providing help to the helpless.

Some perspective is also in order. For most of American history, social services programs have been run by largely faith-based organizations at the local level, with low administrative costs and a unique understanding of the particular needs of their neighbors in trouble. But now, the government funds, controls, and administers many of these programs—leading to higher taxes, greater inefficiency, and less success. Today, a family with two earners pays over 40 percent of their income for taxes, more than they spend on their own food, clothing, and housing combined. When the government takes so much, little is left for those families to give to their local charities, including faith-based organizations. At the same time, the government too often excludes out-of-hand faith-based organizations from the receipt of government funds even when such organizations can help meet basic human needs most effectively and in accordance with both the free exercise of religion and the Establishment Clause. This is a problem charitable choice programs seek to address.

Now some critics of charitable choice programs say they worry that federal funds will be used to preach to people. Implicit in that criticism is the idea that religious persons can't be trusted to follow rules against the use of federal funds for proselytizing activities. Other critics of charitable choice say they worry that churches will become corrupted by money if they receive federal funds. Implicit in that criticism is the idea that religious persons are more prone to corruption than anyone else who receives government funds. I reject those assumptions, and I hope we can all begin a discussion of charitable choice by according those moved by faith the same respect we accord to others.

We must not forget that faith lifts the chin of the hopeless. It lifts spirits and helping hands. Faith is the engine that drives millions of Americans to sacrifice for others, and none should remain idle for lack of fuel. It is with an end toward ensuring that no well of compassion goes untapped that charitable choice proposals are made.

A first step toward understanding the constitutional issue related to proposals to expand the number of federal programs governed by charitable choice principles is to understand how those principles have been followed thus far. The witnesses before us today have important and insightful stories to tell and I look forward to exploring with them how existing charitable choice programs have been implemented.

ARTICLE FROM THE WALL STREET JOURNAL

TUESDAY, AUGUST 24, 1999

POLITICS & POLICY

'CHARITABLE CHOICE' TESTS LINE BETWEEN CHURCH, STATE

BY ROBERT S. GREENBERGER

STAFF REPORTER OF THE WALL STREET JOURNAL

WASHINGTON—Operation Blessing, a group founded by Christian activist Pat Robertson that aids the homeless, recently lost a \$50,000 federal grant. The reason? The group asked those it helps if they believe that being observant Christians would save them from eternal damnation.

The grant was part of a program known as "charitable choice," which Congress approved in 1996 as part of welfare overhaul. Under the program, the U.S. gives funds to religious groups to use to combat poverty and other social ills. Opponents warn that the effort, which is strongly supported by the two presidential frontrunners, Vice President Al Gore and GOP Texas Gov. George W. Bush, will destroy the constitutional separation between church and state by mixing religion and taxpayers' funds.

But so far, the possible missteps of Operation Blessing turn out to be an aberration. Many church groups, apparently reluctant to become enmeshed in government rules and bureaucracy, aren't rushing to the federal trough. Most religious organizations that already provide social services and that get federal funds continue to carefully avoid mixing social work and proselytizing, partly out of concern about lawsuits that could lead to legal restrictions on their activities.

"With charitable choice, we're finding that, out there, a lot of churches are complying with the constitution," and "they're not proselytizing," says Julie Segal, legislative counsel of Americans United for Separation of Church and State, one of the most outspoken opponents of charitable choice. The group continues to search for a lawsuit to test the constitutionality of the concept.

Meanwhile, one reason for the reluctance of many groups to participate may be a disconnect among conservative religious groups. National conservative religious leaders were among the strongest proponents of the charitable-choice provision. But at the local level, conservative congregations seem the least interested among religious groups in participating in charitable choice.

In a 1998 survey of 1,236 religious congregations, Mark Chaves, a University of Arizona associate professor of sociology, found that only 24% of those who described themselves as theologically and politically conservative said they would be interested in joining the program, but 47% of self-described liberal or middle-of-the-road groups were interested.

Some conservative groups fear that accepting federal funds and the government rules that go with them could lead to a slide toward secularism. "The natural drift of government involvement and government funding is to become more and more like your secular-government host," says Joseph Loconte, an expert on charitable choice at the Heritage Foundation, a conservative think tank. "There is a deep, abid-

ing and rational suspicion that government can't keep its mitts off these groups," he adds.

No one knows how many religious groups are participating in charitable choice, or how much public money is being spent, because the funds are being doled out by states and local governments.

The program tries to attract individual churches to get involved with social services. But religious groups that have a long history of such work and of accepting government funds have solved the potential constitutional problem—and the problem of seeping secularism—by establishing separate affiliates to perform such functions. Indeed, most feel more comfortable operating that way.

The Catholic Church, for example, has for more than 100 years sponsored social services through Catholic Charities, an affiliate. Father Kevin Sullivan, chief operating officer for Catholic Charities of the archdiocese of New York, says, "We have always believed that the separation of church and state doesn't mean that there is no role for religious-affiliated organizations to participate in providing needed health and human services."

Still, the actions of Operation Blessing, which is working to get its funding restored, show how easy it can be for any religious organization to cross the fine line between aiding the needy and possibly breaching the separation between church and state. And while charitable choice is politically popular, the idea is fraught with ambiguities.

Carl Esbeck, a law professor at the University of Missouri law school, says charitable choice is grounded in a neutrality principle in constitutional law that says all private-sector providers of social services, whether religious or secular, should be treated equally. "What's important is that the provider of services be effective. There is anecdotal and increasingly empirical evidence that a strong spiritual base by the provider makes them more effective," says Mr. Esbeck, who developed the charitable-choice concept for GOP Sen. John Ashcroft of Missouri, author of the charitable-choice amendment.

But Melissa Rogers, associate general counsel of the Baptist Joint Committee on Public Affairs, disagrees. "We take the view that government should be neutral to religion. And it does that best by refusing to fund it, refusing to advance it and by keeping a healthy separation between church and state."

Further, while the law says religious organizations that receive direct government funds can't use the money to proselytize, it is silent on whether these groups may use their own funds to attempt religious conversions of those receiving the social services.

Similarly, the law permits religious organizations that receive federal funds to maintain their constitutional exemption from hiring-discrimination rules. Barry Lynn, executive director of Americans United for Separation of Church and State, calls that provision "an absurd contradiction. If [a religious group] is working on secular issues, why the need to hire only people of one religion?"

Oliver Thomas, a special counsel for the National Council of Churches, agrees. He contends that having a religiously mixed work force is the best way to ensure that groups don't proselytize those who receive their services. "If a church wants to get a grant, they ought to be required to give up their right to discriminate in hiring on that program," he says.

There also are sharply divided views over the charitable-choice amendment's looser regulations for religious organizations that receive federal funds through vouchers, rather than directly through grants or contracts. Under the law, if the government provides a voucher to a recipient of services who then uses the voucher to pay for services, the religious group is free to conduct all of its activities, including efforts at conversion.

Supporters say this permits an organization to maintain its religious character while accepting federal funds. But Ms. Segal of Americans United complains that "The money doesn't become clean just because the recipient walks it from the government to the church."

Sen. Ashcroft insists that his legislation has "good firewalls against abuses." He says charitable choice allows organizations to maintain their religious character. And to protect against infringements on recipients' rights, "we give the absolute right to the individual to reject proselytizing" and receive services somewhere else, he says.

Despite the constitutional issues at stake, it is unlikely that the courts will step in soon to determine whether the line between church and state needs to be adjusted.

"I don't think the courts are prepared to tell us they're not going to allow some experimentation on this, if there are adequate safeguards," says Mr. Thomas of the

National Council of Churches. "This is the way the whole country is moving, and Congress is one step ahead of the country with the charitable-choice provision."

Mixing Church and State

Some religious groups that receive public funds to perform social services under the charitable-choice program:

Faith and Families:

Works with over 90 local churches in Shreveport, La., and supports a job-placement program under a contract with the state.

Payne Memorial Outreach Center:

An arm of Payne Memorial African Methodist Episcopal Church, Baltimore. Runs a job-search-and-training program under a state contract.

Faith Works:

Coalition of about 68 churches in Redding, Calif. Works under a county contract to provide assistance to people trying to make the transition to work from welfare.

United Community Center:

Works with community churches in Fort Worth, Texas. Uses state funds to provide job-search-and-preparation skills to people moving to work from welfare.

The Exodus Program:

Operated by Christ Emanuel Christian Fellowship in Cincinnati. Uses county funds to support job-readiness education program for people coming off welfare.

JULIE A. SEGAL, ESQ.
STRATEGY AND POLICY CONSULTANT
Washington, DC 20009

Honorable STEVE CHABOT, *Chairman,*
Subcommittee on the Constitution
Committee on the Judiciary
House of Representatives, Washington, DC

DEAR CHAIRMAN CHABOT: It is my understanding that you quoted me during yesterday's Constitution Subcommittee hearing on state and local implementation of existing "charitable choice" programs. Apparently, comments of mine that appeared in the Wall Street Journal in August 1999 were used to imply that I believe that "charitable choice" is constitutional because religious organizations that were receiving government funds were complying with the constitution. I am writing this letter to clarify the record, to place my comments in the appropriate context, and to assure you and the Committee that I believe that "charitable choice" and any similar legislative schemes are unconstitutional and violate the religious liberty of social service beneficiaries, religious organizations and their publicly paid employees, and taxpayers. I ask that this letter be included in the printed hearing record so as to rectify any implication that my views are different from the ones I detail here.

For five years, I served as the Legislative Counsel of Americans United for Separation of Church and State. During that time, I led the opposition to "charitable choice" and other programs that violate the separation of church and state by allowing taxpayer dollars to fund public health or social service programs in pervasively religious organizations such as churches and other houses of worship. Although I left my position with Americans United over one year ago, I continue to oppose such schemes and currently serve as a consultant and spokesperson against "charitable choice" and the newly created White House Faith-Based Initiative.

My comments that appeared in the Wall Street Journal two years ago are completely consistent with my prior and present views. I said, "with charitable choice, we're finding that, out there, a lot of churches are complying with the constitution," and "they're not proselytizing." This statement concerns churches that seek government funding for their social service programs and comply with the constitution by establishing separate religiously-affiliated or 501(c)(3) entities to administer the programs. These separate entities are not "pervasively religious" and they adhere to the necessary constitutional safeguards, including not proselytizing the beneficiaries, and not discriminating against publicly paid employees on the basis of religion. In other words, my comments two years ago referred to churches and other houses of worship that were ignoring the unconstitutional structure of "charitable choice" and were instead contracting with governments in a manner that respected the separation of church and state. Furthermore, my comments also reflected the

fact that, until recently, many states had not yet implemented “charitable choice,” and few programs existed that necessitated a legal challenge.

I hope that this letter sufficiently explains the context of my comments in the *Wall Street Journal*, and that the hearing record will reflect this clarification.¹ I would also welcome the occasion to discuss these issues further with you and your staff. I believe there are many opportunities for religious organizations and governments to work together without violating the constitutional principle of church-state separation, and without offending our commitment to civil rights. Unfortunately, “charitable choice” does not provide such an opportunity.

Sincerely,

JULIE A. SEGAL

cc: Honorable Jerold Nadler
Ranking Member

¹For further information and arguments about “charitable choice,” see Segal, “‘A Holy Mistaken Zeal’: The Legislative History and Future of Charitable Choice,” *Welfare Reform & Faith-Based Organizations*, 9–27 (1999).



The Growing Impact of Charitable Choice

A Catalogue of New Collaborations Between
Government and Faith-Based Organizations
in Nine States

by

Dr. Amy L. Sherman
Senior Fellow, Welfare Policy Center, Hudson Institute
Urban Ministries Advisor, Trinity Presbyterian Church

March, 2000



The Charitable Choice Tracking Project

This *Catalogue* is a report from the Charitable Choice Tracking Project, an initiative of the Center for Public Justice. Researched and prepared in 1999, it offers a snapshot in time of how a growing number of faith communities across America are responding to the Charitable Choice provision from the 1996 federal welfare reform law.

The Charitable Choice Tracking Project is a two-year effort to study the implementation and impact of the Charitable Choice provision on government collaboration with faith-based organizations in social service delivery. The Tracking Project research team consists of Dr. Stanley Carlson-Thies, Director of Social Policy at the Center for Public Justice, and Stephen Lazarus, who serves as Research Associate. Project Advisors include Carl Esbeck, Director of the Center for Law and Religious Freedom at the Christian Legal Society; Stephen Monsma, Professor of Political Science at Pepperdine University; and Amy Sherman, Senior Fellow at the Welfare Policy Center of the Hudson Institute.

The Project consists of a nine-state mail survey of faith-based organizations and research into how state and local governments are complying with the Charitable Choice provision, as well as investigative studies of particular faith-based organizations and faith communities. It provides the first systematic examination of how states are implementing the Charitable Choice rules that accompany their welfare block grants. The Project also aims to document how the protections prescribed by Charitable Choice are affecting faith-based organizations and the people they serve. Major funding for this research was provided by the Smith Richardson Foundation, Inc.

The Center for Public Justice is a national, non-partisan, policy research and civic education organization, whose purpose is to serve God, advance justice, and transform public life through its mission of equipping citizens, developing leaders, and shaping public policy.

The Center for Public Justice
P.O. Box 48368
Washington, DC 20002-0368
410-571-6300
www.cpublicjustice.org

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Executive Summary

The landmark 1996 federal welfare reform law establishes new rules for collaboration between government and the faith community in serving the poor. Called "Charitable Choice," these rules prohibit public officials from discriminating against religious social service providers seeking to compete for government contracts. They protect the religious integrity and character of faith-based organizations (FBOs) that accept government dollars by granting them important rights: to retain authority over their mission and governing board; to maintain a religious atmosphere in their facilities; and to select only staff who agree with their religious beliefs. They prohibit FBOs from using government funds for purposes of sectarian worship, instruction, or proselytization and ensure that service beneficiaries uncomfortable receiving aid from religious providers will be able to obtain help from alternative organizations. Charitable Choice creates a level playing field between secular and religious service providers competing for public funding, and, it is hoped, will facilitate increased government-faith collaboration without compromising the religious character of the service providers or abridging the civil liberties of clients.

Based on research in nine states completed in summer 1999, Charitable Choice is accomplishing these aims. Charitable Choice has made church-state collaboration *plausible* to public officials and religious leaders. Religious groups accepting government funding are not having to sell their souls, and clients' civil rights are being respected. Charitable Choice is also stimulating new collaborations. Over half of the FBOs currently working formally with government in new initiatives to serve the poor had no previous history of such relationships. The traditional social services network is being broadened with the inclusion of "new players," and, importantly, these new players are doing new things. That is, in their collaboration with government, churches and FBOs are offering low-income citizens services they had not previously offered. In most instances, these religious groups have shifted from merely providing commodities to the poor (e.g., used clothing or free groceries) to working with struggling individuals intensively, face-to-face, through mentoring and job training programs. The nine states surveyed for this study include: California, Illinois, Massachusetts, Michigan, Mississippi, New York, Texas, Virginia and Wisconsin.

Charitable Choice's impact has been modest, though notable. Strictly speaking, Charitable Choice applies only to financial relationships between government and social service pro-

viders. Research in the nine states reveals 84 new financial collaboratives since 1996. Yet many in government and the faith community use “Charitable Choice” in a broader sense, to denote all new forms of government-faith community collaborations under welfare reform. A total of 41 new non-financial relationships were identified in the nine states. Most of these initiatives began within the last year and a half. Although a grand total of 125 new financial and non-financial collaborations in nine states appears a small number, it reflects a significant amount of activity, involving hundreds of congregations and FBOs and thousands of welfare recipients. The new contracts with FBOs range from \$5,000 to over \$350,000.

While survey interviews indicated considerable enthusiasm among government and faith representatives for these new collaborations, interviews also revealed that few people in either community are well-educated about the specifics of Charitable Choice. Charitable Choice’s detailed guidelines are being codified into formal contracts only in Texas and Wisconsin. In all states, much remains to be done to bring government administrative procedures and procurement policies into sync with the letter and spirit of Charitable Choice.

Comprehensive Table of Collaborations

State	Organization	Type of Collaboration				Old or New Provider ¹		Type of Service					
		Financial (Direct)	Financial (Indirect)	Non-Financial	Traditional	Non-Traditional	Mentoring	Job Training	Life Skills	Trans-portion	English Skills	Alcohol or Drug Addiction	Other
CA	Shasta County FaithWORKS	X				X	X			X			
CA	All Congregations Together (ACT)	X				X				X			
	Transportation Initiative												
CA	Brady JobNET	X				X		X					
CA	Institute for Success	X				X		X					
CA	Mobilization for the Human Family		X			X	X						
CA	K.D. Flowers Job Training		X			X	X	X					
CA	City Impact		X			X							
CA	All Congregations Together (ACT)		X			X							
	Help Desk												X
CA	ACT Group Mentors		X			X	X						
CA	Allen Temple Baptist Church		X			X							X
CA	San Leandro Community Church		X			X	X						
CA	Help of Ojai "Community Assistance Program"			X		X							X
CA	Sacramento Valley Organizing Committee (SVOC)			X		X	X						X
CA	"Join Together" (Office of Social Ministry)			X	X		X	X					
CA	REACH "Family to Family"			X		X	X	X					
CA	Harvest BANC			X	X		X						X

¹ Those initiatives that include a mix of traditional providers and organizations new to collaboration with government are included in both categories.

State	Organization	Type of Collaboration			Old or New Provider ¹		Type of Service						
		Financial (Direct)	Financial (Indirect)	Non-Financial	Traditional	Non-Traditional	Mentoring	Job Training	Life Skills	Transportation	English Skills	Alcohol or Drug Addiction	Other
CA	Allen Temple Baptist Church "Job Information Center"			X		X		X					
CA	Providence Baptist Church of God in Christ (COGIC)	?						X					X
CA	Glide Memorial United Methodist Church (UMC)	?						X					
IL	Blaine Street Baptist	X				X	X	X					
IL	Southside Office of Concern	X			X		X	X					
IL	Ministerial Alliance of Chicago Heights	X						X	X				
IL	Partners for Hope in Health	X					X	X					X
IL	"Adopt a Family Faith-Based Success"	X					X	X			X		
IL	Lessie Bates Neighborhood House	X					X						
IL	Front Door Initiative		X			X							X
IL	Partners for Hope			X		X							X
IL	"Adopt-A-Family" — Peoria			X		X	X			X			X
IL	East St. Louis "Father Center"			X		X							X
IL	School Attendance Initiative			X		X	X						X
MA	Refugee Apostolate, Inc.	X											
MA	Jewish Vocational Services	X			X		X	X					
MA	St. Mary's Women's and Infant Center		X		X		X	X					
MI	Good Samaritan Ministries	X			X	X							
MI	Berrien County Council of Churches Mentoring Program	X				X							
MI	Lutheran Family Services	X			X		X						
MI	Grand Rapids Area Center for Ecumenism (GRACE)	X			X		X						
MI	Salvation Army — Big Rapids	X			X		X						

State	Organization	Type of Collaboration				Old or New Provider ¹		Type of Service					
		Financial (Direct)	Financial (Indirect)	Non-Financial	Traditional	Non-Traditional	Mentoring	Job Training	Life Skills	Trans-portion	English Skills	Alcohol or Drug Addition	Other
MI	Michigan Organizing Project	X				X	X		X				
MI	Salvation Army "Bridge Builders"	X			X		X		X				
MI	Lutheran Child and Family Services	X			X		X						
MI	Higher Grounds		X			X	X						
MI	Joy of Jesus "G.A.P."			X		X		X					
MI	Michigan Neighborhood Partnership			X		X							X
MI	Lighthouse of Oakland County			X		X	X						
MS	Mississippi Faith and Families			X		X	X						
NY	Jewish Community Council	X			X			X					
NY	Salvation Army of New York	X			X			X					
NY	Jewish Family Services	X			X			X				X	
NY	Corporation 820	X			X			X	X				
NY	Interfaith Partnership for the Homeless	X				X		X					
NY	Schenectady Inner-city Ministries	X				X		X					
NY	Catholic Charities — Binghamton	X			X		X						
NY	Pathways to Independence			X	X			X					
NY	Troy Area Furniture Program			X		X							X
NY	Westchester County Mentoring ²	?	?	?		X	X						
NY	Westchester County Transportation ³	?	?	?		X				X			
TX	Jobs Partnerships of Austin	X				X	X	X	X				

² Future program; not included in program survey count

³ Future program; not included in program survey count

State	Organization	Type of Collaboration			Old or New Provider ¹		Type of Service						
		Financial (Direct)	Financial (Indirect)	Non-Financial	Traditional	Non-Traditional	Mentoring	Job Training	Life Skills	Trans-portion	English Skills	Alcohol or Drug Addiction	Other
TX	Mission Waco	X				X	X	X	X				
TX	United Community Centers	X			X		X	X					
TX	Lutheran Social Services of the South	X			X								
TX	Community of Grace			X		X	X	X	X				
TX	Christian Women's Job Corp			X		X							X
TX	People Attempting to Help (PATH) — Tyler			X	X								
TX	Texas Family Pathfinders			X		X	X						
TX	Brazos Valley Interfaith Mission			X		X			X				X
TX	Christian Care			X		X							X
TX	Son-Shine Outreach Center			X		X							X
TX	Lord's Pantry			X		X							
TX	Encouragement Coaching for Highest Opportunities(ECHO)			X		X	X						
TX	Lubbock Citizens Against Poverty (CAP)			X		X							X
TX	Reach Across Houston			X		X	X	X			X		
TX	Upper Rio Grande Workforce Development Board			X		X	X	X					X
TX	Jobs Partnership of Washington County			X		X	X	X	X				
TX	Grace Community Church — Del Rio			X		X			X				
TX	United Methodist Army			X		X	X						X
VA	Norfolk Interfaith Partnership	X				X	X						
VA	Operation Breaking Through	X			X			X			X		
VA	Circuit Rider		X			X				X			
VA	Hampton Ecumenical Lodging and Provision (HELP)			X	X								X

State	Organization	Type of Collaboration				Old or New Provider ¹		Type of Service						
		Financial (Direct)	Financial (Indirect)	Non-Financial	Traditional	Non-Traditional	Mentoring	Job Training	Life Skills	Transportation	English Skills	Alcohol or Drug Addition	Other	
VA	Regional Jobs Support Network			X	X	X							X	
VA	Neighbor-to-Neighbor			X		X	X							
VA	Jeremiah Project			X		X			X					
VA	Botetourt Organization for Outreach and Support in Transition (BOO5T)			X		X	X							
VA	Roanoke Area Ministries (RAM) Employment Program			X	X			X						
VA	Hampton Roads Regional Forum			X	X	X							X	
VA	Community Resource Program			X	X	X							X	
WI	Lutheran Social Services (LSS)—Ashland County	X			X		X		X					
WI	LSS—Bayfield County	X			X		X		X					
WI	LSS—Burnett County	X			X		X		X					
WI	LSS—Price County	X			X		X		X					
WI	LSS—Sawyer County	X			X		X		X					
WI	LSS—Washburn County	X			X		X		X					
WI	Lutheran Social Services	X			X		X						X	
WI	Salvation Army (Dane County)	X			X		X						X	
WI	YWCA (Dane County)	X			X		X						X	
WI	Madison Area Hospitality Network	X				X							X	
WI	Middleton Outreach Ministry	X				X	X							
WI	Rhineland Region Salvation Army	4			4								X	
WI	Rhineland Region Catholic Social Services	X			X		X						X	
WI	Rhineland Region Interfaith Volunteer Caregivers	X				X	X		X					

State	Organization	Type of Collaboration			Old or New Provider ¹		Type of Service						
		Financial (Direct)	Financial (Indirect)	Non-Financial	Traditional	Non-Traditional	Mentoring	Job Training	Life Skills	Trans-portion	English Skills	Alcohol or Drug Addition	Other
WI	Rhineland Region Catholic Charities	X			X								X
WI	Eau Claire Region Lutheran Social Services	7			7							X	X
WI	Eau Claire Region Salvation Army	4			4								X
WI	Eau Claire Region Juneau Peace Committee	X				X			X				
WI	Eau Claire Region Interfaith Volunteer Caregivers	X				X	X						
WI	Master Services		X			X		X					
WI	Amazing Ministries		X			X						X	
WI	House of Peace		X			X							X
WI	Milwaukee Career Cooperative		X			X		X	X	X			
WI	Project Equality		X			X							X
WI	Amazing Ministries		X			X						X	
WI	Rising Sun		X			X							
WI	Faithworks		X			X						X	
WI	Community Enterprises of Greater Milwaukee		X			X			X	X			
WI	Faith-Based Task Force			X									
WI	Evangel Life Center			X	X	X		X					X

CharitableChoice Compliance: A National Report Card

Charitable Choice can revolutionize welfare. This new federal rule busts the barriers that excluded many religious providers from state procurement of welfare services. But states have to put the new rule into effect by getting rid of old restrictive policies and practices. While many states are now reaching out to faith-based groups, the law requires that they must also come into compliance with Charitable Choice.

TX	A+	First and most aggressive compliance with Charitable Choice. Gov. Bush (R) initiated taskforce, rewrite of procurement rules, and redesign of procurement process and spending programs to maximize openness to faith-based organizations (FBOs).
IN	A	Under Gov. O'Bannon (D) the state has clarified the rights of religious groups in contracts and established FaithWorks Indiana to facilitate collaboration, provide technical assistance, and conduct outreach to identify effective FBOs.
OH	A	The state took early notice of Charitable Choice and distributed Legal Brief 98-04 to inform county welfare agencies about the new contracting rules and ensure that they follow the new law. To expand collaboration the state provided training for agency staff.
WI	A	Charitable Choice was adopted into state law in 1997. Gov. Thompson (R) made faith-based subcontractors a key performance indicator for W-2 (welfare) contractors in 1998. Assembly Speaker Jensen pushed faith-based initiatives in new areas in 1999.
AZ	B	Adopted HB 2423 just last year to make Charitable Choice cover all contracting by the Department of Economic Security and the Department of Human Services (includes all federal, state, and local funds).
IL	B	The state is aware of Charitable Choice requirements and is slowly reforming restrictive practices. Project Hope reaches out to faith groups, but without taking account of Charitable Choice.
PA	B	Welfare leadership is committed to Charitable Choice rules. One model collaboration with a Philadelphia church. Outreach by state-level liaison communicates new opportunities for faith communities to participate.
VA	B	Lt. Gov.'s taskforce (1999) made Charitable Choice a key tool to bust barriers to collaboration. Human Services Secretary has now made compliance a priority and has required procurement review.
AR	C	Until recently, little notice taken of Charitable Choice. As of August 2000, the state plans to inform county Transitional Economic Assistance coalitions of the requirement to abide by Charitable Choice guidelines.
CA	C	Welfare was devolved to counties without requiring Charitable Choice. Knowledge and compliance varies. A new law (SB 516) requires the development of Charitable Choice regulations. Future impact uncertain.
MI	C	Some respectful financial relations with FBOs. But state leadership has ignored Charitable Choice as a chance to fix policies that impede equal opportunity for faith groups. Some legislators are pressing for change.
NC	C	Compliance is uneven across the state, but counties have been informed about Charitable Choice and some have changed procurement practices.

AK	F	IA	F	MO	F	NY	F	WA	F
AL	*	ID	F	MS	F	OK	F	WV	F
CO	F	KY	F	MT	F	OR	F	WY	F
CT	F	KS	F	NE	F	RI	F	Guam	F
D.C.	F	LA	F	ND	F	SC	F	Puerto Rico	F
DE	F	MA	F	NH	F	SD	*	Virgin Islands	F
FL	F	MD	F	NJ	F	TN	F		
GA	F	ME	F	NM	F	UT	F		
HI	F	MN	F	NV	F	VT	F		

States receiving Fs fall short on compliance with Charitable Choice. While some of these states are expanding their work with FBOs, they are ignoring Charitable Choice rules that should guide the new collaborations.

The F states:

- do not protect the rights of FBOs (CT, FL, GA, IA, ID, HI, IL, LA, ME, MO, NH, NJ, NM, UT, WV, WY, Guam, Puerto Rico, Virgin Islands).
- have changed legislation to permit contracting with FBOs and protect clients, but not to protect FBO rights (CO, MD, WA).
- do not have an exemption to contract requirements so that

FBOs can hire by commitment to religious mission (AK, DE, KS, KY, NB, OR, RI, SC, TN).

- have devolved welfare to counties or regional bodies without requiring compliance with Charitable Choice (CO, FL, MN).
- mistakenly claim Charitable Choice is an option they can ignore (DC, MA, MS, VT).
- mistakenly claim they are exempt from Charitable Choice due to the state's constitution (WA).
- are only now beginning to consider what Charitable Choice requires (NV, OK, OR).
- The state refused to supply sufficient information regarding compliance with Charitable Choice.

How Does Compliance Differ from Expanded Collaboration?

Welfare reform's requirement to end dependency is reminding welfare officials that helping the poor takes more than government. It requires partnerships with civil society, including churches and other faith-based organizations that offer encouragement and guidance as well as training. Many welfare agencies are reaching out to faith communities to find ways to collaborate for the sake of clients who need more than a check or classroom instruction.

But expanded collaboration is not a substitute for compliance with Charitable Choice. Charitable Choice is a rule about procurement—government purchase of certain services from outside organizations. It differs from agency referrals to faith-based providers, partnerships in which church volunteers agree to mentor welfare families, or giving new religious groups grants for

services—but without protecting their religious integrity or the rights of clients.

Charitable Choice isn't optional. It doesn't matter whether a state is enthusiastic about partnering with faith groups. It must comply with Charitable Choice if it spends its federal welfare funds to buy services. Faith-based groups don't have to compete for funds if they choose not to, but states have no choice: they are obligated to comply with Charitable Choice by removing barriers.

Besides being obligatory, state compliance sends a valuable signal to the faith communities, to the public, and to welfare bureaucracies that barriers to collaboration are being replaced by respectful cooperation.

What Does Compliance with Charitable Choice Require?

To be compliant, states have to go beyond their past practice of contracting with religiously affiliated providers to obtain secular services. Nonprofit organizations with a religious background already could collaborate with government, as long as religion was marginalized. Houses of worship already could sponsor secular programs. Charitable Choice lays down new rules for government contracting, which are now obligatory for states that accept TANF and Welfare-to-Work funds. To be compliant, states must follow the new rules when they use the federal money to buy services:

- **Eligibility**—religious organizations, even if "pervasively sectarian," can compete for funds to provide services (churches can be required to set up separate nonprofits, but the nonprofits don't have to be secular).

- **New Freedoms**—religious organizations can display religious symbols, use religious and moral concepts, and use religious standards for hiring staff.

- **Limitations**—religious organizations must serve clients without regard to religion, allow clients to sit out religious activities, and not use government contract funds for worship, doctrinal instruction, or proselytizing.

- **Client Rights**—clients have a right to service without religious coercion and must be given an alternative by the government if they object to a faith-based service provider.

Because these are new rules, different from the old restrictive rules, in order to be in compliance with Charitable Choice, states must evaluate their procurement policies and practices and change those that conflict with Charitable Choice.

What is Charitable Choice?

Charitable Choice is a section of the 1995 federal welfare reform law (PRWORA), which changed the main welfare program from Aid to Families with Dependent Children to Temporary Assistance for Needy Families (TANF). Charitable Choice enables faith-based organizations to compete for government funds to provide welfare services "on the same basis" as other providers but without sacrificing their "religious character." It also includes strong protections for the religious freedom of clients.

Many religious organizations have honorably teamed with government to help the needy before Charitable Choice, but government rules usually pressed them to become secular (a religious motivation was OK but not a faith dimension). Charitable Choice says religious providers getting government funds need not sideline religion. And faith-based organizations that feared

secularization or that were prevented from participating now can compete for funds.

Charitable Choice applies to TANF spending (1996), the Welfare-to-Work program (1997), and Community Action Agencies (1998). This report covers TANF and W-TW funds. Similar rules apply to federally funded certificates for child care and to Refugee Resettlement. Congress is considering extending Charitable Choice to programs for fatherhood, at-risk juveniles, substance abuse treatment, and adoption, and to all federally funded procurement of human services.

Charitable Choice is a federal law applying to state procurement of services using federal funds. To make a difference for poor families and faith-based organizations, states must reform their policies and practices: they must become compliant.

Resources

- *A Guide to Charitable Choice* (The Center for Public Justice and the Christian Legal Society, 1997)
- Amy Sherman, *The Growing Impact of Charitable Choice: A Catalogue of New Collaborations Between Government and Faith-Based Organizations in Nine States* (The Center for Public Justice, March 2000)

The *Guide* and other Charitable Choice resources are available on the Center's website: www.cpjjustice.org

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CharitableChoice Compliance:

A National Report Card

PREPARED STATEMENT OF CHRISTOPHER E. ANDERS, LEGISLATIVE COUNSEL,
AMERICAN CIVIL LIBERTIES UNION, WASHINGTON, DC

I. INTRODUCTION

The American Civil Liberties Union greatly appreciates the opportunity to submit this statement expressing our concern that H.R. 7, which expands charitable choice to twelve new federal program areas, would undermine nearly sixty years of federal civil rights protections against most uses of federal money by persons engaged in employment discrimination based on religion. This statement focuses solely on how H.R. 7 would subject employees, and applicants for employment, to possible discrimination by federally-funded religious organizations. If H.R. 7 passes, these government-funded religious organizations would be able to fire, or refuse to hire, an employee simply because he or she does not belong to the organization's religion—or because he or she does not follow all of the religion's practices.

While the harm to employment civil rights laws is one of the most pernicious results of H.R. 7, it is not the only problem caused by the bill's radical approach to government funding of religion. The ACLU will later provide the Subcommittee with further analysis of other harms that H.R. 7 would cause to both beneficiaries of federal programs and to religious organizations themselves.¹

The ACLU's opposition to H.R. 7's government funding of religion is consistent with the ACLU's long history of protecting the dual rights of freedom of religion and freedom from the governmental establishment of religion. Founded in 1920 to protect the civil liberties and civil rights embodied in the Bill of Rights and Equal Protection Clause, the ACLU is a nonprofit, nonpartisan membership organization that has fought in Congress and the courts to preserve or restore protection for claims of religious exercise, while also opposing governmental efforts to establish religion. The ACLU believes that H.R. 7 is a severe attack on both the right to freedom of religion and the right to be free from the governmental establishment of religion.

II. FRAGILITY OF THE LONG NATIONAL COMMITMENT TO BARRING MOST FEDERAL FUNDS FROM PERSONS DISCRIMINATING BASED ON RELIGION

The anti-civil rights employment provision of H.R. 7,² which would allow federal funds to go to religious organizations that require their employees to adhere to the religious practices of the organization, is a broad assault on core employment civil rights protections that date back to President Franklin D. Roosevelt. For nearly sixty years, the nation has committed itself to one of its oldest civil rights principles—that the federal government will not provide federal funds to persons who discriminate against others. However, the very brevity of the employment provision in H.R. 7 reveals the fragility of those protections. Only a few words can gut long-standing protections.

Although Title VII of the Civil Rights Act of 1964 allows religious organizations to use their own private money to prefer to employ members of their own religion, 42 U.S.C. §§ 2000e-1(a), 2000e-2(e)(2), federal funds generally cannot go to anyone—including religious organizations—that discriminate against employees and potential employees based on religion.³ However, the ban on federal funds going to contractors and grantees that discriminate in employment based on religion cannot be found in any single nondiscrimination statute. Instead, the ban is a patchwork of

¹Other concerns about H.R. 7's government funding of religion include the: (i) potential it would create for discrimination against beneficiaries of social programs and for discrimination by the government among various religions; (ii) conflict between religious tenets the bill protects and professional or technical standards that could result in erosion of such standards; (iii) absence in H.R. 7 of any meaningful criteria for providing access to non-religious alternatives for those who object to religion-based services; and (iv) whether laws that protect employees, other than civil rights laws, would be preempted by the sweeping requirement that religious institutions receiving federal funding be allowed to require employees to adhere to religious practices.

²The principal employment provision of H.R. 7 provides that: "[i]n order to aid in the preservation of its religious character, a religious organization that provides assistance under a program described in subsection (c)(4) may, notwithstanding any other provision of law, require that its employees adhere to the religious practices of the organization." H.R. 7, 107th Cong. § 201 at pp. 22–23 (2001).

³However, these civil rights protections do not block all religiously-affiliated organizations from receiving federal money to provide social services. In fact, many religiously-affiliated groups have participated for decades in federal and state-funded activities. Those organizations, including Catholic Charities, Lutheran Social Services, and the United Jewish Communities, have all agreed to follow the nondiscrimination provisions that apply to other organizations receiving federal funds. Any religious organization that follows the lead of any of these religiously-affiliated groups can participate in federal programs by abiding by the same rules that apply to all other federally-funded service providers.

constitutional, programmatic statutory restrictions, executive orders, and regulations.

The first piece of the patchwork against religious discrimination in employment by persons receiving federal funds could hardly have had a more historic start. Almost exactly sixty years ago, as the nation mobilized for war, the great civil rights and labor leader A. Philip Randolph was organizing the first March on Washington for Civil Rights. A. Philip Randolph, *Why We March* (Nov. 1942), *reprinted in Civil Rights Since 1787* at 303–06 (Jonathan Birnbaum & Clarence Taylor, eds. 2000). The goals of the march included integrating African-Americans and other minorities into the national economic and political life as the country prepared for a war that would require all to sacrifice. *Id.* After discussions between the Roosevelt Administration and the March committee, Mr. Randolph cancelled the march and President Roosevelt agreed to sign a bold new executive order protecting persons based on race, religion, color, and national origin. *Id.*

Thus, more than sixty years ago this June—more than two decades before the signing of the Civil Rights Act of 1964—President Roosevelt ordered all federal agencies to “include in all defense contracts hereafter negotiated by them a provision obligating the contractor not to discriminate against any worker because of race, creed [religion], color, or national origin.” E.O. 8802 (June 25, 1941).

President Roosevelt later expanded the civil rights provision to include all government contracts, and Presidents Truman, Eisenhower, Kennedy, and Johnson strengthened its protections. *See Contractors Ass’n of Eastern Pa. v. Sec’y of Labor*, 442 F.2d 159, 171–74 (3d Cir. 1971), *cert. denied sub nom. Contractors Ass’n of Eastern Pa. v. Hodgson*, 404 U.S. 854 (1971) (describing the history of the executive orders barring employment discrimination by federal contractors). The current executive order requiring contractors to agree not to discriminate in employment based on religion or other characteristics is Executive Order No. 11246, which President Johnson signed and Presidents Nixon and Carter amended. *Id.* The common objective of all seven presidents from both political parties was to keep taxpayers’ money from going to persons who discriminate—including on the basis of religion. *Id.*

Congress and the Executive Branch have bolstered the employment civil rights protections provided by the executive order on contractors by adding statutes and regulations affecting a wide range of federal contract and grants programs. *See, e.g., infra* at 8–9. For sixty years, the basic principle has been that the federal government should not be financing persons who engage in religious discrimination in employment against others.

However, perhaps because the national commitment to keeping federal funds from those who discriminate based on religion in employment has been so longstanding, Congress never enacted a statute codifying the prohibition for all federal programs and activities. The result is that the patchwork of constitutional, statutory, regulatory, and executive order protections against federal funds going to those who discriminate based on religion is far more fragile than other civil rights protections. Thus, one of the oldest and most important civil rights protections is also one of the most vulnerable to legislative attack—in this instance by the employment provision of H.R. 7.

III. HARM CAUSED BY THE EMPLOYMENT PROVISION OF H.R. 7 TO CIVIL RIGHTS PROTECTIONS

A. Description of the Exemption in H.R. 7

H.R. 7 exempts religious organizations participating in twelve enumerated federal program areas from all laws prohibiting employment discrimination based on religion. Specifically, H.R. 7 provides that: “[i]n order to aid in the preservation of its religious character, a religious organization that provides assistance under a program described in subsection (c)(4) may, *notwithstanding any other provision of law*, require that its employees adhere to the religious practices of the organization.”⁴ H.R. 7, 107th Cong. § 201 at pp. 22–23 (2001) (emphasis added). It then adds a savings paragraph that specifically protects several statutes from the sweeping scope of the general provision allowing a religious organization to require employees to adhere to the organization’s religious practices. The paragraph saves several civil rights statutes by specifically providing that they would continue to bar at least certain discrimination against participants in federal programs based on race, color,

⁴ The same subsection also adds a paragraph stating that the federal funding does not affect a religious organization’s exemption from Title VII of the Civil Rights Act of 1964. H.R. 7 at p. 23 (citing 42 U.S.C. §§ 2000e-1, 2000e-2(2)). However, given the preceding paragraph’s broad exemption from all laws prohibiting employment discrimination based on religion, the Title VII reference is superfluous.

national origin, disability, and age. *Id.* at p. 23. However, that savings paragraph would not bar any discrimination based on religion, sex, pregnancy status, marital status, or sexual orientation, and would not bar all race, color, or national origin discrimination. *Infra* at 12–14.

B. H.R. 7 Threatens Two Sets of Civil Rights Laws

The sweeping exception for religious organizations to receive federal funds while also requiring employees to adhere to specific religious practices would affect two sets of civil rights protections. Specifically, it would (i) allow religious discrimination by government-funded contractors and grantees even when employees and applicants for employment would otherwise have protection against religious discrimination, and (ii) would allow those same federally-funded contractors and grantees to claim that enforcing adherence to a particular religious practice authorizes the employer to fire, or refuse to hire, a person for a characteristic other than the employee's religion, such as race, color, national origin, sex, pregnancy status, sexual orientation, or marital status.

1. *A New Exception to Civil Rights Laws Protecting Against Religious Discrimination by Federally-Funded Contractors and Grantees:* If H.R. 7 becomes law, employees and applicants for employment at government-funded religious contractors and grantees could be subjected to religious discrimination without recourse to any legal protection. These contractors and grantees would be able to hire or fire an employee simply because his or her religion differs from the religion of the government-funded religious service provider. At present, there are no generally applicable civil rights statutes prohibiting religious discrimination in employment by persons receiving federal funds. The broadest protection against religious discrimination in employment by federal contractors and grantees is provided by Executive Order No. 11246, *supra* at 4–5. However, the “notwithstanding any other provision of law” clause in H.R. 7 would provide an exception for religious organizations to that longstanding executive order and its implementing regulations. Likewise, it would provide an exception to all other agency-level administrative prohibitions against religious discrimination.

Moreover, the employment provision would undermine some of the only statutes providing protection against religious discrimination caused by persons receiving federal funds. Those statutory nondiscrimination provisions are all embedded in the authorizing language for specific federal programs.

Although most authorizing statutes passed by Congress do not contain program-specific nondiscrimination statutes, a majority of the twelve programs that would be subject to the employment provision of H.R. 7 currently have statutory nondiscrimination requirements that protect against religious discrimination in employment. Perhaps not coincidentally, H.R. 7 applies to some of the only federal social service programs that have specific nondiscrimination provisions. Specifically, H.R. 7 will undermine the statutory nondiscrimination requirements that, in whole or in part, prohibit religious discrimination in the following federally-funded programs: the Omnibus Crime Control and Safe Streets Act of 1998, 42 U.S.C. § 3701 *et seq.* (includes a religious nondiscrimination provision at 42 U.S.C. § 3789d(c)); federally assisted housing programs, 42 U.S.C. § 13601 *et seq.* (includes a nondiscrimination provision requiring compliance with all civil rights laws at 42 U.S.C. § 13603(b)(2)); the Workforce Investment Act of 1998, 29 U.S.C. § 2801 *et seq.* (includes a religious nondiscrimination provision at 29 U.S.C. § 2938); domestic violence programs, *see, e.g.*, 42 U.S.C. § 10603 (includes a religious nondiscrimination provision at 42 U.S.C. § 10604(e)); the Child Care Development Block Grant Act of 1990, 42 U.S.C. 9858 *et seq.* (includes a modified religious nondiscrimination provision at 42 U.S.C. § 9858L); the Community Development Block Grant Program of the Housing and Community Development Act of 1974, 42 U.S.C. § 5301 *et seq.* (includes a nondiscrimination provision requiring compliance with all civil rights laws at 42 U.S.C. § 5304 (b)(2)); and the Job Access and Reverse Commute grant program of the Federal Transit Act of 1998, 49 U.S.C. § 5309 note (includes a religious nondiscrimination provision at 49 U.S.C. § 5332(b)). By creating exceptions to these statutory nondiscrimination provisions, H.R. 7 rips the patchwork of federal employment civil rights protections against religious discrimination by federally-funded contractors and grantees.

2. *A New Exception to Civil Rights Laws Protecting Persons Against Discrimination Other Than Religious Discrimination:* The other set of civil rights laws that are vulnerable to harm caused by the broad exception for discrimination authorized by H.R. 7 could include civil rights laws protecting persons on the basis of characteristics such as race, sex, pregnancy status, sexual orientation, or marital status. By authorizing federally-funded religious contractors and grantees to require employees to “adhere to the religious practices of the organization,” H.R. 7 would allow feder-

ally-funded religious organizations to ask applicants for jobs such interview questions as: What is your religion? Is your spouse the same race as you? Are you married or divorced? Was your marriage annulled? Are you pregnant? What does your church teach about sexual orientation? Are you willing to work only with members of your own sex? Are you gay or straight? A wrong answer would mean no job—even though the employer is federally-funded.

These concerns are not far-fetched. Several federal courts have held that the provision in Title VII of the Civil Rights Act of 1964, that permits religious organizations to prefer members of their own religion, includes the right to discriminate in employment against persons who do not adhere to the teachings and tenets of the religion. For example, a court held that a religiously-affiliated school could dismiss an unmarried, pregnant teacher because premarital sex was against the church's teachings. *Boyd v. Harding Academy of Memphis, Inc.*, 88 F.3d 410 (6th Cir. 1996). In a similar decision, a court found that a religiously-affiliated school could fire a teacher who did not have her marriage annulled in accordance with the religion's practices. *Little v. Wuerl*, 929 F.2d 944, 951 (3rd Cir. 1991). In addition, another court held that a religiously-affiliated school could fire a school counselor after she attained a leadership position in a church that accepted gay and lesbian members. *Hall v. Baptist Memorial Health Care Corp.*, 215 F.3d 618, 625 (6th Cir. 2000). Although these cases concerned only privately-funded activities, H.R. 7 would allow similar defenses when federally-funded religious contractors and grantees engage in similar discrimination.

Perhaps the best known case of a religiously-affiliated organization claiming a religious right to discriminate based on a characteristic other than religion involved Bob Jones University's claim that it had a religious reason to discriminate based on race because it subscribed to religious beliefs against marriage between persons of different races. *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983). After nearly a decade of litigation, the Supreme Court held that the federal government could deny Bob Jones University a preferred tax status because the government's compelling interest in eradicating racial discrimination in education outweighed the university's interest in its discrimination. *Id.* However, the sweeping "notwithstanding any other provision of law" clause in the employment subsection of H.R. 7 could call even *Bob Jones Univ.* into question because the provision could push aside all other civil rights protections.

3. *H.R. 7's Provision Saving Other Federal Civil Rights Laws Will Have No Effect on Many Discrimination Claims:* The protection seemingly afforded by the savings provision of H.R. 7 could be illusory for many persons subjected to employment discrimination by federally-funded contractors and grantees. The third paragraph of H.R. 7's employment subsection sets the only limitation on the scope of the subsection's broad exemption from civil rights laws for federally-funded religious organizations. It provides that "nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions" of federal statutes barring discrimination based on race, color, national origin, disability, and age in federal programs and activities, and based on sex and visual impairment in certain federally-funded educational activities. H.R. 7, § 201 at p. 23.

At first glance, the paragraph may appear to provide significant protection to persons suffering employment discrimination caused by federally-funded religious organizations. However, a closer examination shows what protections are missing. Specifically, the paragraph saves absolutely no laws protecting persons against discrimination based on religion, sex,⁵ pregnancy status, marital status, or sexual orientation in any federally-funded program or activity.

In addition, even the provision specifically saving the applicability of Title VI of the Civil Rights Act of 1964, which protects persons participating in federal programs and activities from discrimination based on race, color, or national origin, provides incomplete protection against employment discrimination. The problem is that, although Title VI protects against some race-based employment discrimination by federally-funded religious organizations, Title VI itself has a statutory exception prohibiting federal agency action "with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment." 42 U.S.C.

⁵ The inclusion of Title IX of the Education Amendment of 1972's prohibition of discrimination based on sex in federally-funded educational activities as a statute saved against the effect of H.R. 7's employment provision is particularly odd and superfluous given that Title IX has never applied to religious educational institutions. See 20 U.S.C. § 1681(a)(3) (exempting religious educational institutions if compliance "would not be consistent with the religious tenets of such organization"). Thus, the savings paragraph of H.R. 7 provides no relief for persons suffering discrimination based on sex.

§ 2000d-3. Thus, the provision saving Title VI does not close every door to a federally-funded religious organization claiming that it has a right to hire persons of a particular race because only employees of a particular race can adhere to the religion's practices, or to hire only persons who agree to such practices as not dating or marrying persons of a different race. The porous savings paragraph of H.R. 7 does not even bar all race discrimination.

IV. CONCLUSION: CURRENT LAW WORKS

The ACLU strongly urges the Subcommittee to continue the sixty-year history of banning federally-funded religious discrimination in employment, by deleting the charitable choice provisions from H.R. 7. There is no need to change the present approach to awarding federal contracts and grants. The anti-civil rights provisions of H.R. 7 benefit only those religious groups who both want federal money and want to discriminate, but it will have no effect on the eligibility of the many religiously-affiliated groups, such as Catholic Charities, Lutheran Social Services, and the United Jewish Communities, that already receive federal funds because they follow the same employment civil rights laws that apply to every other federally-funded service provider. The possibility that government funded religion will result in federal funds going to persons who discriminate against others is a risk that this Subcommittee can and should avoid.

PREPARED STATEMENT OF THE ANTI-DEFAMATION LEAGUE

INTRODUCTION

The Anti-Defamation League is pleased to provide testimony as the House Judiciary Subcommittee on the Constitution conducts hearings on "charitable choice" programs and government funding of faith-based organizations. So-called "charitable choice" programs are constitutionally suspect—and even if they were not, such programs are bad public policy and may negatively impact the vitality of religion in America.

THE ANTI-DEFAMATION LEAGUE

The Anti-Defamation League has long been a lead voice advocating for the separation of church and state. Founded in 1913 to "to stop the defamation of the Jewish people and to secure justice and fair treatment to all citizens alike," ADL has worked tirelessly to fight anti-Semitism, racism and bigotry (including religious intolerance), to advocate for good will and mutual understanding among Americans of all creeds and races, and to safeguard the rights and liberties of all Americans. To this end, and to the end of the general stability of our democracy, ADL advocates for the separation of church and state and the right to the free exercise of religion.

As Americans, as Jews, and as advocates for the rights of religious minorities across America, we urge Congress and state officials to place a moratorium on further efforts to pass and implement "charitable choice," so that *a full examination of these initiatives can take place*. In this regard, we welcome these first congressional hearings on "charitable choice." Despite the fact that Congress has enacted "charitable choice" provisions into law several times since 1996, it has acted without a single hearing on the subject until today.

WHAT THIS DEBATE IS AND IS NOT ABOUT

This debate is not about whether faith groups play an important role in this country in caring for the poor, the needy, the homeless, and the elderly. The debate is not about how well faith-based organizations perform their social welfare and public health services. This debate is also not about whether faith in a higher being can help addicts conquer addictions or the jobless find jobs. This debate is not even about whether the government should provide funding to assist "religiously-affiliated" groups in meeting our basic social needs.

Instead, this debate is about freedom from government intrusion into religious life in America. It is about preserving the freedom of religion guaranteed by the United States Constitution, and it is about the government-free marketplace of ideas which has empowered religion to experiment with new ideas and new ways of doing things—especially in the area of social services.

In short, this debate is about preserving and protecting the fundamental right of all Americans to freely practice their religion and live free of unwanted government-sponsored pressure to conform to any one religious ideology.

Necessary Safeguards: Crafting Government-Religion Partnerships That Work

Notably, not all government funding for the delivery of social services by faith-based organizations is problematic. Organizations such as the Jewish Federations, Catholic Charities, and Lutheran Social Services have been delivering government-funded social services for years, and they have done so with extraordinary success. However, these organizations have worked (indeed, thrived) under a set of rules and safeguards that have ensured that taxpayer money does not go to fund sectarian activity—and that no beneficiary or program employee is discriminated against on the basis of religion.

Indeed, this is one of the most surprising and disappointing aspects of the debate over “charitable choice”: these divisive proposals are not sufficiently taking into account the *success of existing government-funded partnerships with religiously-affiliated organizations*. In seeking to establish a whole new system of government contracting, “charitable choice” fails to recognize the fact that the groups mentioned above have provided excellent service to communities while maintaining safeguards that have protected beneficiaries from unwanted and unconstitutional proselytizing, that protect religion and that protect government.

ADL strongly believes that, with certain safeguards in place, government-religion partnerships are beneficial to all. ADL has suggested safeguards that are designed to protect religious freedom and prevent government and religion from becoming entangled. These safeguards, designed to protect constitutional guarantees of religious liberty, must ensure that:

- No program beneficiary is subjected to unwanted and unconstitutional proselytizing when he or she receives government-funded social services;
- Taxpayer money does not fund religious (and other) discrimination in the hiring and firing of people who will deliver the services;
- Secular alternatives to religiously-provided services are readily available; that those who prefer secular alternatives are made aware of them without having to ask; and that realistic and convenient access to such alternatives exist;
- Proper firewalls between government-funded services and the core religious activities of a religious organization are firmly in place, so that taxpayer dollars are not channeled into other religious activities of sectarian organizations and so reasonable government audit and oversight activity does not peer into the activities of a religious organization. As a practical matter, this can best be implemented through religious organizations’ establishment of a separate corporate structure, by creating an affiliated 501(c)(3) organization, which would distinguish the activities of a sectarian religious entity from its government-funded social welfare mission;
- Program recipients comply with all requirements and restrictions imposed upon all government-funded activity by the Religion Clauses of the First Amendment to the United States Constitution; and
- Extremist, terrorist or hate-mongering groups are not eligible to receive government money.

With these safeguards in place, government-religious partnerships can—and do—work.

THE CONSTITUTIONALITY OF “CHARITABLE CHOICE”

“Charitable choice” programs, such as the one contained in the 1996 Welfare Reform Act or proposed in pending legislation such as H.R. 7, are constitutionally suspect on their face and, we believe, will likely be unconstitutional as applied. By “charitable choice” we mean any program that would allow the use of government funds (at any level of government) to be used to assist faith-based organizations in carrying out a social-service mission, but without the necessary safeguards against religious coercion and discrimination outlined above.

While several recent Supreme Court decisions have obfuscated whether government monies may ever go to faith-based organizations, *no decision by the court has undermined the basic conclusion that government money may never be used by pervasively sectarian organizations for religious purposes*. Moreover, Court rulings indicate that a system of adequate safeguards must be in place to ensure that no aid is diverted to religious use. Finally, “charitable choice” initiatives in areas that are highly regulated and licensed (social work, psychology, counseling, food preparation, drug and alcohol rehabilitation programs, provision of housing), are likely to engender an excessive entanglement of government and religion, rendering them constitutionally suspect.

The touchstone of analysis for legislation that proposes government funding for faith-based initiatives is the establishment clause of the First Amendment to the United States Constitution, which prohibits Congress and, through the Fourteenth Amendment, the States, from making any law “respecting an establishment of religion.” *U.S. Const. Amend. I*.

Establishment clause cases are analyzed under the tripartite test established in *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971). If a statute fails any portion of this test, it violates the establishment clause. *Lemon* says in pertinent part:

First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion. Finally, the statute must not foster an excessive government entanglement with religion. (*Id.*, at 612–13) (internal citations and marks omitted).¹

While the *Lemon* test has undergone some revisions, it remains unquestionable that under the “primary effects” prong, direct government funding of religious institutions and their activities (precisely what is proposed under “charitable choice”) is and should remain impermissible. Moreover, under the “excessive entanglement prong” (considered independently or as part of the “primary effects” prong), “charitable choice” will likely not survive Constitutional scrutiny.

1. *The government may not aid religious activities.* As Justice O’Connor noted in *Rosenberger*, it is a “bedrock principle” of establishment clause doctrine that government may not aid religious activities. *Rosenberger v. University of Virginia*, 515 U.S. 819, 847, 115 S.Ct. 2510, 12525, 32 L.Ed.2d 700 (1995) (O’Connor, J., concurring), *see also Bowen v. Kendrick*, 487 U.S. 589, 642, 108 S.Ct. 2562, 2592, 101 L.Ed.2d 520 (1988) (Blackmun, J., dissenting). Indeed, the First Amendment “absolutely prohibit[s] government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith.” *Grand Rapids v. Ball* 473 U.S. 373, 385, 105 S.Ct. 3216, 87 L.Ed.2d 267 (1985) (overruled on other grounds by *Agostini v. Felton*, *supra*).

Thus, any “charitable choice” program that gives money to social services organizations that use religious worship, instruction or proselytizing as a part of their program would be unconstitutional. This is true even where the government is distributing money along neutral criteria (to the religious and non-religious alike). *Roemer v. Board of Public Works of Maryland*, 426 U.S. 736, 474, 96 S.Ct. 2337, 49 L.Ed.2d 179 (1976) (Plurality).

Importantly, *Mitchell v. Helms*, 530 U.S. 793, 120 S.Ct. 2530, 147 L.Ed.2d 660 (2000), does not change this conclusion. As Justice O’Connor noted in her determinative concurrence:

Although “[o]ur cases have permitted some government funding of secular functions performed by sectarian organizations,” our decisions “provide no precedent for the use of public funds to finance religious activities.” *Mitchell*, 120 S.Ct. at 2558 (citing *Rosenberger*, 515 U.S., at 847 (O’Connor, J., concurring)).

While Justice O’Connor would require evidence of actual diversion to sectarian activity to find an unconstitutional expenditure of government money, her opinion does not overturn the basic conclusion: government may never fund religious activity.

Indeed, Justice O’Connor counsels specific caution when dealing with money to religious institutions:

In fact, the most important reason for according special treatment to direct money grants is that this form of aid falls precariously close to the original object of the establishment clause’s prohibition. *See, e.g., Walz v. Tax Comm’n of*

¹Note that the Court has subsequently (perhaps) modified the *Lemon* test. In *Agostini v. Felton*, 521 U.S.203, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997) (school aid), the Court examined only the first and second of those factors, *see id.*, 521 U.S. at 222–223, 117 S.Ct. 1997, recasting the “entanglement prong” inquiry as simply one criterion relevant to determining a statute’s effect, *Id.*, at 232–233, 117 S.Ct. 1997.

In *County of Allegheny v. ACLU*, 492 U.S. 573, 594–602, 655–79 (1989) (holiday displays), the Court used a two-part test, holding that the establishment clause was violated when 1) government is excessively entangled with religion, or 2) government endorses or disapproves of religion. This case also introduced Justice Kennedy’s two-part coercion test in a concurrence: 1) government may not coerce participation in religion, and 2) government may not directly benefit religion). In *Wallace v. Jaffree*, 472 U.S. 38, 56 & n. 42 (1985) used a two-part test by O’Connor finding it appropriate to determine whether the government’s purpose is to endorse or disapprove of religion). In *Agostini*, the Court reaffirmed the *Lemon* in cases involving school aid, but noted that the entanglement prong could be considered as an aspect of the effects inquiry. *See Simmons-Harris v. Zelman*, 234 F.3d 945 (6th Cir 2000).

City of New York, 397 U.S. 664, 668, 90 S.Ct. 1409, 25 L.Ed.2d 697 (1970) (“[F]or the men who wrote the Religion Clauses of the First Amendment the ‘establishment’ of a religion connoted sponsorship, financial support, and active involvement of the sovereign in religious activity”). *Mitchell*, 120 S.Ct. at 2566.

This caution arises out of the fact that money is fungible, and when sent to a religious organization—even with the explicit command that it is not to be used for religious activity—it is hard to track to what program it is going to and what money it is supplanting.

2. *The Government may not provide direct monetary aid to “pervasively sectarian” organizations.* The court has ruled that monetary aid (under certain limited circumstances) can go to a non-pervasively sectarian religious organization (*Kendrick*) and that non-monetary aid can go to even a sectarian organization (*Mitchell*). However, Justice O’Connor noted sharp concern with direct monetary grants to religious institutions: the “concern with direct monetary aid is based on more than just diversion [to sectarian activity]” *Id.*, 120 S. Ct at 2566. Additionally, as she noted:

This Court has “recognized special establishment clause dangers where the government makes direct money payments to sectarian institutions.” *Mitchell* 120 S.Ct. at 2559–60, citing *Rosenberger*, 515 U.S. at 842.

A pervasively sectarian organization is one where the religious and secular are “inextricably intertwined.” *Kendrick* 487 U.S. at 620n16 (compare with *Mitchell*, 120 S.Ct. at 2552 where the plurality rejects this distinction²). Thus, if a pervasively sectarian organization is one in which the religious and the secular *cannot* be separated, it is clear, *a fortiori*, that advancing the secular is advancing the sectarian. Since government may not advance the sectarian activity of any religious organization, no pervasively sectarian organization may receive government funding. Simply, it is difficult to consistently argue that direct government monetary aid could ever go to a pervasively sectarian organization; if it does it is necessarily advancing religion.

Even if Justice O’Connor would require evidence of the actual diversion of funds to religious purposes, it is hard to imagine that where money that flows to an organization where sectarian and secular are inextricably intertwined, actual diversion will not be found.

3. *“Charitable choice” programs will invariably engender excessive entanglement between government and religion.* As the Court noted in *Agostini*:

[T]o assess entanglement, we have looked to “the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and religious authority.” Similarly, we have assessed a law’s “effect” by examining the character of the institutions benefited (e.g., whether the religious institutions were “predominantly religious”), . . . and the nature of the aid that the State provided (e.g., whether it was neutral and nonideological). *Agostini*, 521 U.S. at 233, 117 S.Ct. at 2015 (internal citations and marks omitted).

With “charitable choice,” not only will the government be responsible for both continually monitoring programs (*Kendrick*, 487 U.S., at 615–617, 108 S.Ct., at 2577–2579) and conducting annual audits in an unprecedented number of cases (*Roemer*, 426 U.S. at 764–765, 96 S.Ct. at 2353–2354), but it will be involved in many other aspects of a program as well, including licensure and regulation of programs, particularly in areas that are particularly highly regulated and licensed: social work, psychology, counseling, food preparation, drug and alcohol rehabilitation programs, provision of housing, and even the provision of legal and medical service. Moreover, “charitable choice” programs may benefit predominantly religious institutions that are far from neutral and non-ideological.

We are concerned that “charitable choice” programs will engender an excessive entanglement of government and religion, likely rendering them unconstitutional. Moreover, audits and traditional government oversight of the money it disburses may well prompt unwelcome, searching government intrusion into the books and records of a religious body. Besides the very unsettling nature of such intrusion, a court may find that such intrusion is excessively entangling.

²Even if the plurality rejects this language, it seems clear that the Supreme Court will have to deal with the case of an organization which has a religious *raison d’être*, which religious practices affect the entire organization, and which effects and impacts are religious in nature (and which wouldn’t have it any other way). Assuredly—call it pervasively sectarian or not—these kinds of entities will require treatment that is different from, say, a religious organization with a separate 501(c)(3) social services entity.

In sum, monetary aid to religious institutions (a) must never benefit religious activity (b) must never be made to pervasively sectarian organizations, (c) must be made under such circumstances so as to prevent the actual diversion of aid and (d) must be done in such a way as to avoid excessive entanglement of religion and government. The safeguards that we have detailed above would help ensure all these objectives.

PUBLIC POLICY ARGUMENTS AGAINST CHARITABLE CHOICE

1. “Charitable Choice” Places Religious Freedom in Danger

“Believing . . . that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their Legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between Church and State.”—Thomas Jefferson to Danbury Baptists, 1802.³

Indeed, religious freedom is one of our most cherished values. It is embodied not only in the words of the First Amendment but is instrumental to our common vision of a country that is free, open, safe and welcoming of all people, whether their religious viewpoints are in the minority or in the majority. From the point of view of the religious and irreligious alike, America must remain a nation where the choice of what, where, and how to pray (or not to pray) is the choice of the individual and not the government.

Despite the over two centuries of successful separation of church and state—and the unparalleled flourishing of religion—there are those who would take our religious institutions and entangle them with the government. “Charitable choice” provisions will bring government and religion into an unprecedented close relationship. Such a relationship invokes Supreme Court Justice Hugo Black’s admonition that—a union of government and religion tends to destroy government and degrade religion.”

Simply, without adequate safeguards to ensure that a proper distance between government and religion is maintained, over time our ability to worship freely and unencumbered by government may be hampered and our religious institutions may begin to lose their vitality.

2. *Taxpayer Money Should Not Fund Religious Discrimination.* All “charitable choice” proposals enacted into law so far allow religious organizations receiving federal tax dollars to maintain their Title VII exemption permitting religious discrimination in the hiring and firing of their employees. Specifically, for instance, a pending House bill, H.R. 7, states:

2) TITLE VII EXEMPTION.—The exemption of a religious organization provided under section 702 or 703(e)(2) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1, 2000e-2(e)(2)) regarding employment practices shall not be affected by the religious organization’s provision of assistance under, or receipt of funds from, a [“charitable choice” program].

While ADL supports the right of religious organizations to hire and fire according to the dictates of their religion, it supports that right only when the position in question is funded by private dollars. Taxpayer money should never be used to subsidize a program in which an employee could be hired or fired on the basis of discriminatory criteria.

Allowing taxpayer dollars to play such a role is both constitutionally suspect and morally wrong. Besides raising serious legal issues (including equal protection issues, discrimination under color of law and the highly problematic notion of an organization that is sufficiently religious to get a Title VII exemption getting taxpayer money), it would simply be unconscionable to allow an employer providing taxpayer-supported social services to be in a position to run an ad for employees saying “Catholics and Jews Need Not Apply.”

3. *Taxpayer Money Should Not Fund Religious Coercion and Proselytizing.* While all “charitable choice” provisions enacted into law so far prohibit use of taxpayer money for “sectarian worship, instruction, or proselytizing,” each “charitable choice” proposal leaves open the possibility that beneficiaries could be subjected to *privately-funded proselytizing* prayer, before, during, and after they receive their government-funded social services.

³ <http://etext.lib.virginia.edu/jefferson/quotations/jeff1650.htm>

ADL is concerned that “charitable choice” proposals may require beneficiaries to participate in religious activity, even where such participation is unwanted, as a *quid pro quo* for assistance. For example, the recently-introduced “charitable choice” expansion legislation, H.R. 7, states that religious organizations that carry out government-funded programs “shall not discriminate . . . on the basis of religion, a religious belief, or a refusal to hold a religious belief.” Yet, that bill drops language from previously-enacted “charitable choice” measures that required providers not to discriminate against beneficiaries who “refus[e] to actively participate in a religious practice.” Does this mean that under the new “charitable choice” bill a program participant could be required to recite a prayer before gaining access to food and shelter? If so, this would be both unconstitutional and deeply disturbing.

4. *“Charitable Choice” Laws and Proposals Provide Inadequate Guarantees of Secular Alternatives.* “Charitable Choice” provisions enacted into law so far fail to provide beneficiaries with adequate safeguards to ensure the availability of meaningful secular alternatives. Most “charitable choice” provisions do provide beneficiaries with a right to a non-religious/secular social service provider—but only if the program participant registers an objection to the “religious character” of a contracting agency. Notice of the right to a secular alternative is only given to those who actually object.

Yet, such an obligation to object first presupposes that the people who are receiving benefits—in many cases our nation’s most needy and most vulnerable citizens—are in a position to ask for alternatives. Simply, the very relationship between provider and beneficiary is an unequal one; to suggest that someone whose life may be at a nadir must ask the person providing them with the necessities of life for another, *alternative* provider is unrealistic and unavailing.

ADL believes that notice about the availability of secular alternatives must be provided to every beneficiary prior to the delivery of faith-based social services.

5. *Separate Incorporation Can Help Ensure that Religious Entities are Safe from Government Intrusion.* No “charitable choice” provisions enacted into law so far require that sectarian organizations—like churches, synagogues, and mosques—separately-incorporate their social services activities. We believe they should.

“Charitable choice” increases the risk of probing government audits and other unwelcome, intrusive accountability investigations. Moreover, even where proposals try to limit how far government can go in auditing the books of a church (a troubling thought in itself), no existing provision would be able to protect sectarian organizations from searching court-ordered discovery requests, especially when suits take place in a state court.

Separate incorporation of a religious organization’s social service activity would go a long way to help protect the integrity of the religious organizations themselves. Placing such a firewall between a group’s religious activity and its secular social service work would thereby protect the former from liability arising out of the latter and reduce the likelihood of intrusive, entangling audits.

6. *“Charitable Choice” May Allow Extremist Groups to Get Taxpayer Money.* Proponents of “charitable choice” have not yet addressed the deeply-troubling prospect that extremists, hate-mongers, and terrorists would be eligible to receive taxpayer money under the guise of providing social services in the name of religion. Taxpayer money going to such groups should be intolerable to all Americans. No adequate proposals has yet been developed to prevent this from happening—though, certainly, we would not want government to decide which religious groups are legitimate and which are not.

“CHARITABLE CHOICE” IS BAD FOR RELIGION

Without adequate safeguards, “charitable choice” will be harmful to religion, for many reasons:

- “Charitable choice” raises serious concerns about the possibility of government entanglement with religious practices and is likely to result in unwelcome, divisive competition among religious groups before elected officials for scarce government funds. Many religious organizations have been rightly wary of “charitable choice,” concerned that their religious ministries would be subject to intrusive government regulation, including audits, reporting requirements, and compliance reviews. Indeed, religion has thrived in America precisely because the government is prohibited from endorsing or burdening religious practice.
- The idea of government inspectors monitoring publicly-funded programs that take place in houses of worship is deeply disturbing. The specter of government auditing the financial books and records of a house of worship is chilling.

- Courts may be able to force sweeping discovery by litigants—including its treatment of members, its organization, how it selects those to carry out its social services mission, and membership lists.
- While “charitable choice” is designed to allow some sectarian activity during the delivery of social services, strict rules about proselytizing are supposed to be in place. Current law, however, does not provide adequate safeguards in this area. Thus, “charitable choice” would require many law-abiding religious people—people who have devoted their lives to spreading a spiritual message through words and good deeds—to muzzle themselves about their most fundamental beliefs while attempting to fulfill a deeply spiritual mission. Many religions are by their very nature evangelical; to require that their adherents not proselytize in these programs would clearly interfere with their spiritual mission—ultimately compromising their ability to inspire and uplift their beneficiaries.
- Churches and synagogues have traditionally provided a wide array of community health and welfare services as part of their sacred religious missions. Members of their congregations and communities have supported them by the countless hours of volunteer services and social action. Receipt of government funds may have a negative impact on volunteer contributions and involvement of church and synagogue members.
- The receipt of federal funds and fierce competition for scarce resources may also compromise religion’s historic and extremely important role as an independent social critic.

Finally, it is important to respond to the charge that “charitable choice” is merely trying to address the wrongful discrimination against religion that is alleged to have occurred in this country. To the contrary, religion has played an important and unique role in our society and has received vast, unique protections for its activities. Indeed, the framers of the Constitution thought that religion was so important that, by writing the establishment clause of the First Amendment to the Constitution, they tried to prevent government from entangling itself with religion—thereby protecting religion from government. The special safeguards ADL believes must be included in any government-funded faith-based social services plan reflect this tradition.

PREPARED STATEMENT OF RICHARD T. FOLTIN, LEGISLATIVE DIRECTOR AND COUNSEL
IN THE OFFICE OF GOVERNMENT AND INTERNATIONAL AFFAIRS OF THE AMERICAN
JEWISH COMMITTEE

My name is Richard Foltin. I am Legislative Director and Counsel in the Office of Government and International Affairs of the American Jewish Committee, the nation’s premier human relations organization with over 100,000 members and supporters and chapters in 32 cities across the United States. I am submitting this testimony to address the concerns of the American Jewish Committee with respect to the “charitable choice” provisions that have been enacted as part of several federal social services programs since 1996.

No topic could be more timely than the one that the Subcommittee will consider today. On January 29, 2001, President George W. Bush issued two executive orders that began implementation of one of his major policy priorities, expansion of the involvement of “faith-based organizations” in the provision of government-funded social services. The first executive order created a new White House Office of Faith-Based and Community Initiatives, tasked with establishing policies, priorities, and objectives in promoting this policy. The second directive, coordinated with the provisions of the first, charged each of five designated Cabinet departments to set up an in-house office in order to identify “barriers” to the participation of faith-based organizations in the delivery of social services provided under the aegis of that department, barriers that could include the department’s standing regulations and practices, and make recommendations for reforms to remove those barriers. This process of review and recommendation is to be completed by around the middle of this year.

The President’s unveiling of his faith-based initiative has given rise to a storm of controversy, with concerns expressed by advocates on both the right and left as to the implications of this approach for church-state separation, civil-rights policy, and the autonomy of religious institutions. This controversy has taken place, however, with much still unclear as to the specifics of how President Bush’s vision of an expanded partnership of government and religious institutions will operate. But even if we do not know the details of the President’s program, many of its likely

elements are to be found in the “charitable choice” construct that was first enacted as part of the 1996 welfare reform law and has been passed by Congress, and signed into law by President Clinton, as part of other social services bills, at least three times since. That approach to government funding of social services is, in our view, an unconstitutional breach of the principle of separation of church and state and just plain bad public policy.

To be sure, the history of social services in this country began with religious institutions, and the partnership between religiously affiliated institutions and government in the provision of those services is a venerable one. Catholic Charities, not to mention many Jewish agencies across this land, have been engaged in such public-private partnerships for many years. Far from objecting to that partnership, the American Jewish Committee, in its 1990 Report on Sectarian Social Services and Public Funding, termed the involvement of the religious sector in publicly-funded social service provision as “desirable to the extent it is consistent with the Establishment Clause. It creates options

for those who wish to receive the services, involves agencies and individuals motivated to provide the services, and helps to avoid making the government the sole provider of social benefits.” The concerns about “charitable choice,” then, do not reflect any lack of high regard for the important work that religious institutions do in providing social services nor an effort to erect an impassible barrier to cooperation between these institutions and the government in the provision of secular social services.

What is new about “charitable choice” is that it permits houses of worship and other pervasively religious institutions to receive taxpayer dollars for programs that have not been made discrete and institutionally separate from the core activities of those institutions, activities that are inextricably permeated with religion (historically, this separation has been carried out through the creation of separate, not-pervasively-religious affiliates to implement the funded program), and it eliminates long-standing church-state and antidiscrimination safeguards when religiously affiliated organizations are engaged in provision of government-subsentved services.

The absence of these historic structures and safeguards opens the door to publicly funded programs in which recipients of social services—withstanding the provisions of “charitable choice” that as a formal matter prohibit any use of public funds for “sectarian worship, instruction or proselytization”—may well be coerced, either explicitly or tacitly, to take part in religious activities as a price of receiving help. This concern has been reinforced by a statement cited in the press of a White House aide who suggested that, under the President’s plan, government dollars will pay for the “light bulbs” while the church will pay for “the Bibles”—in other words, the prohibition on the use of public funds for religious purposes becomes nothing more than a bookkeeping trick.

“Charitable choice” also presents a significant potential for fostering divisiveness among various faith groups as they compete for public funding, a potential that will only be multiplied as government officials charged with determining with whom to contract or renew contracts are placed in the role of deciding which religion “works better” in dealing with the social problems to which public programs are addressed. And “charitable choice” allows religious providers to make employment decisions based on religion with respect to the employees hired to provide taxpayer-funded services. Religious institutions are appropriately permitted to prefer co-religionists in hiring decisions for privately funded activities, an exemption from otherwise applicable civil rights laws that exists in recognition of the powerful religious liberty interests involved. But it is simply improper for taxpayer dollars to be used to fund religious discrimination.

Further, despite its provisions intended to protect the religious character of institutions that receive funding, it is hard to see how “charitable choice” will not ultimately lead to an undermining of the distinctiveness, indeed the very mission, of religious institutions. With government dollars comes government oversight; faith-based organizations will inevitably be held accountable for the use of the dollars they receive just as any other recipient of government funds would be. This intrusion into the affairs of churches and other pervasively religious organizations is exactly the type of entanglement of religion and state against which the Constitution guards.

Proponents of “charitable choice” point to its provision that beneficiaries of social services shall, in all events, be entitled to have those services provided by a secular agency, if they so desire. But it is difficult to believe that those alternative providers will be available in all cases, and, it is important to recall as well, the recipients of services that will be provided under “charitable choice” are often in extremis. They may not clearly understand their options, and, even if they do so understand, may be reluctant to take steps that might delay or obstruct their receipt of badly

needed services. And all of this is to say nothing of the concern that the “charitable choice” approach may signal government moving back from its essential role as guarantor of the social safety net, placing burdens on religious and other private providers that they are in no position to bear.

In the end, the most fundamental problem with “charitable choice” may be the conceptual paradox at its heart. “Charitable choice” seeks to allow government to utilize the spiritual ministry of churches, synagogues and other pervasively religious institutions as a tool in the provision of social services while, at the same time, assuring that the programs are administered in a fashion that protects beneficiaries of these services from religious coercion and protects the religious institutions from undue interference by the state with their autonomy. This approach to social services provision is untenable because of the practical—to say nothing of the constitutional—problems posed by any effort to reconcile these inconsistent goals.

